



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: MAR 27 2007

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust her status to that of lawful permanent resident (LPR); however, she was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in failing to find that the evidence established extreme hardship, in applying an unduly stringent evidentiary burden, and in failing to analyze all the hardship factors. Counsel asserts that the applicant's husband will suffer emotional, psychological, and financial hardship if the applicant is removed. On appeal, counsel submits a July 9, 2005 psychological evaluation of the applicant's spouse, as well as statements by the applicant and her husband which were previously included in the record. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's use of a limited border crossing visa to procure admission into the United States in 1995, by which time she had already been living in the United States as an undocumented immigrant. The applicant does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she

must demonstrate extreme hardship to her U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen child will therefore be considered in this analysis only insofar as it affects the hardship experienced by her spouse. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Id. at 566.

The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of returning to his native Mexico to remain with the applicant, as he would lose his solid and secure career in the restaurant industry, and he would be unable to obtain any suitable employment in Mexico. In his statement dated November 25, 2002, the applicant's husband wrote that his job provides his family with financial stability and the ability to secure his retirement and their son's future education. The applicant's husband wrote that he could not leave the United States, jeopardizing his family's financial welfare.

The record in the instant case does not establish the nature and extent of the employment possibilities available to the applicant and her spouse in Mexico; thus, it cannot be concluded that the applicant's husband would be unable to find a suitable position or that he would suffer extreme economic hardship if he moved to Mexico. The AAO also notes that a change in employment and/or economic status often accompanies a relocation abroad as a result of removal and does not constitute extreme hardship.

In addition, counsel asserts that it would be difficult for the applicant's husband to readjust to life in Mexico, as he has spent his entire adult life in the United States. According to the evaluation performed by licensed family and marriage therapist [REDACTED], whether the applicant's husband remains in the United States without the applicant, or moves to Mexico to be with her, he will undergo extreme psychological and emotional duress. In his letter submitted with the waiver application, the applicant's husband wrote that he will suffer anxiety if he remains in the United States, separated from the applicant and his son, because they enjoy a very strong emotional bond and because he would worry about their well-being.

The therapist's report does not indicate whether the applicant's spouse was ever under medical or psychological treatment prior to the applicant's waiver application, nor does it recommend that he follow any particular course of treatment. Although the therapist writes that the applicant's husband is undergoing a high degree of stress and anxiety due to the applicant's unstable immigration status, no facts or conclusions presented indicate that the applicant's husband's emotional suffering would be extreme, or beyond that experienced by similarly situated spouses.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). *Perez v. INS, supra*, defined "extreme hardship" as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The evidence on the record does not establish that the applicant's husband would be unable to obtain employment in Mexico, or that he would experience extreme hardship in adjusting to life in that country. Also, there is no documentation establishing that the applicant's husband would suffer greater than usual emotional distress if the applicant were removed. The AAO does not disregard or take lightly the applicant's husband's concerns regarding the choices and changes he may face due to the applicant's inadmissibility; however, his experience is not demonstrably more negative than that of other spouses separated as a result of removal.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.