



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date: **MAY 24 2007**

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 was found to be inadmissible to the United States under section 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 in January 1997. The applicant is married to a lawful permanent resident and has four U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to show that her qualifying relative would suffer hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated April 8, 2004.

On appeal, counsel asserts that both individually and cumulatively, the hardship the applicant's spouse would face as a result of the applicant's removal rises to the level of extreme and she merits a waiver in the exercise of discretion. *Statement in Support of Form I-290B*, not dated.

The record indicates that at her October 29, 2003 adjustment of status interview, the applicant stated that in January 1997 she entered the United States at the San Ysidro Port of Entry with a fraudulent permanent resident card. *Applicant's Sworn Statement*, dated October 29, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel asserts that the applicant is the caretaker of her four U.S. citizen children and that the applicant's spouse will suffer financially and emotionally if the applicant is removed from the United States. He states that if the applicant is not permitted to remain in the United States, her spouse will be unable to maintain his current employment, which requires him to be available twenty-four hours a day. *Statement in Support of Form I-200B*, not dated. The record indicates that the applicant's spouse is employed with [REDACTED], earns \$13.76 per hour and is guaranteed to work a minimum of 40 hours per week. *Letter from Employer*, dated May 5, 2004. Counsel states that the applicant's spouse's employer requires him to be available on short notice at all hours in case of emergencies and if the applicant was not available to watch the children the applicant's spouse would lose his job. *Counsel's Brief*, dated June 1, 2004. The AAO notes that no documentation was submitted to support these statements regarding the conditions of employment for the applicant's spouse. In addition, counsel states that prior to being employed with the tree surgery company, the applicant's spouse was employed as a field laborer and would likely have to return to a similar job if he lost his current employment as a result of the applicant's inadmissibility. Counsel states that this change in employment would cause tremendous financial hardship, as fieldwork pays very little. *Id.* The AAO notes that the record establishes that the applicant's spouse previously worked for a California vineyard management company. However, no evidence demonstrates that the applicant's spouse would not be able to meet his financial responsibilities were he again to perform this type of employment. The AAO notes that the record indicates that the applicant and her husband bought their home in 2001, when he still worked for his previous employer. Furthermore, the applicant has submitted no documentation concerning her spouse's ability to find employment in Mexico.

Counsel states that the applicant and her spouse have decided that if the applicant cannot remain in the United States the children will initially follow their mother to Mexico until they are old enough not to require daycare. When they no longer require daycare they will return to the United States and live with their father. *Id.* Counsel states that because of his employment situation and the house he owns in the United States, the applicant's spouse cannot relocate with the applicant to Mexico. *Id.* Counsel states that their situation will be worsened by their financial difficulties and the inability of the applicant's spouse to visit his family in Mexico. He states that this would impose a tremendous emotional hardship on the applicant's spouse. Counsel also states that the applicant's spouse will suffer from knowing that his children are suffering. He states that the applicant's children will not receive the same medical insurance or education in Mexico. *Id.* The applicant's spouse states that three of his four children are in school and that two of the children have learning disabilities. He states that they receive special classes through their school for these disabilities. The applicant's spouse states that there are no schools on the ranch where his family would live in Mexico and that they would try to find private education for his children, but that may not be possible. He also expresses concern that his two children with learning disabilities will not receive the special classes they receive in the United States. *Applicant's Spouse's Statement*, dated April 28, 2004. The applicant submitted a letter from the Principal at his children's school. The letter verifies that the two older children attend after school intervention programs and receive extra support in language arts. *Letter from Principal at* [REDACTED]

dated April 30, 2004. The applicant has provided no evidence to demonstrate that her two children would not be able to find this kind of educational support in Mexico. Furthermore, the letter from the principal at the children's school indicates that the children are receiving help in language arts because they have difficulties with the English language, a problem that would not occur in Mexico where the children would be learning in Spanish. *Id.* Similarly, the applicant submitted a letter verifying that the family receives health insurance through the applicant's spouse's employer, however, no evidence was submitted to show that the applicant's family would no longer receive these benefits in Mexico or that they would not qualify for other medical insurance in Mexico.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the current record does not establish that this hardship rises to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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

ORDER: The appeal is dismissed.