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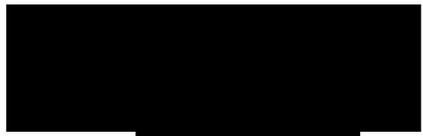
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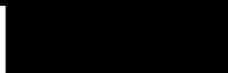
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Office: LOS ANGELES, CALIFORNIA

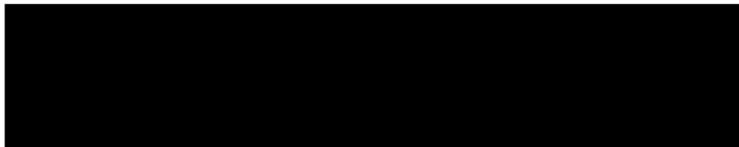
Date: NOV 06 2007

IN RE: Applicant:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 entry into the United States by fraud or willful misrepresentation. The record indicates that on October 22, 1995, the applicant made a false claim to U.S. citizenship in order to gain entry in the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her naturalized U.S. citizen spouse and three children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

In support of this appeal, counsel submits a letter in support of the appeal; a notarized declaration from the applicant's spouse, a naturalized U.S. citizen; a psychological evaluation of the applicant's spouse; an evaluation prepared by a school psychologist and a speech and language specialist in regards to the applicant's son, [REDACTED] an individualized education program for the applicant's son, [REDACTED]; a letter from a teacher and a school psychologist in regards to the applicant's son, [REDACTED] tax and financial documents for the applicant and her spouse; a copy of the applicant's marriage certificate; copies of the applicant's children's U.S. birth certificates; pay stubs received by the applicant's spouse; a copy of the applicant's spouse's naturalization certificate; and mortgage payment documentation. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 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...

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. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

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

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In support of the waiver, the applicant's spouse asserts that he needs the applicant to remain in the United States to assist with the care of their three U.S. citizen children. The applicant's spouse states "...My life would be thrown upside down if my wife were to be deported. I love my wife and all my children very much, but care about them all. But one of my greatest concerns is for our youngest son, [REDACTED] who is almost four-years old, has been diagnosed as being mildly mentally retarded. Even though he is almost four, he only uses a few words. He receives special education services through our local...school district. He has an IEP (individualized educational program) which has been designed specifically for him and his special needs. He

has the services of special teachers who are trained to deal with his kind of disability, plus the services of the school psychologist...who has been a great help to [REDACTED] is making slow but steady progress at school and we desperately do not want to have that interrupted...[the applicant] is absolutely irreplaceable in our lives. She takes the kids to school, bathes and feeds them. She is particularly indispensable when it comes to [REDACTED] is essentially non-communicative. [REDACTED] is closer to his mother than anyone else in his life, including me...To deal as a single parent (if my wife were removed) with raising three kids, one of whom is retarded, and also make a living at the same time, would be unbearably difficult for me..." *Declaration of [REDACTED]* dated July 16, 2005.

A psycho-educational/speech-language team report confirms the applicant's spouse's statements regarding his son, [REDACTED]. As the report states "...[REDACTED] is currently showing cognitive processing skills between the mild to moderate range of educable retardation...Overall, the current results indicate substantial global developmental delays. [REDACTED] appears to qualify for service in special education under the category of mental retardation..." *Psycho-Educational/Speech-Language Team Report*, dated April 14, 2005. [REDACTED] teacher and the school psychologist state that [REDACTED] "...continues to need the care and support of his current intact family in order to leave and develop to his potential." *Letter from [REDACTED] Teacher and [REDACTED] School Psychologist*, dated June 28, 2005.

Counsel has also provided a psychological evaluation for the applicant's spouse. [REDACTED] Ph.D., in the evaluation conducted on July 8, 2005, states "...In discussion with him [the applicant's spouse], he described in detail that for about five years now he has been worrying about this incident before INS and is extremely worried that his whole family will be destroyed by this move and particularly talked about his wife in a very loving way...all this he said he thinks about constantly and even has trouble keeping his work going because his mind is preoccupied... Overall the examiner would say that he is a very positive citizen and much consideration should be given to the damage that will be done to him and to his son, particularly, if his wife is forced to go back to Mexico..." *Psychological Evaluation of [REDACTED] by [REDACTED] Ph.D.*, dated July 13, 2005.

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if he and the children remained in the United States while the applicant returned to Mexico. Due to the extraordinary demands placed upon the family by the youngest child's learning disability, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner to three young children, one with a learning disability, without the complete emotional, physical, financial and psychological support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the constant monitoring and supervision the children require while the applicant works outside the home, a costly proposition for the applicant's spouse.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule were the applicant removed, as the applicant would no longer be residing in the United States and assisting in the care of the three children. Such a reduced work schedule would likely mean that the applicant's spouse is no longer able to be employed in a management role. In addition, any alternate employment position would pay less as he would be working fewer hours. The applicant's spouse would face hardship beyond that

normally expected of one facing the removal of a spouse. As such, were the applicant removed, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. Although the AAO has determined that the applicant's spouse would experience extreme hardship if the applicant were removed, the applicant has not established that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to reside with the applicant.

Counsel states that "...should he [the applicant's spouse] choose to relocate the family to Mexico, he would lose his job and never come close to earning what he could in United States...that would clearly be hardship by any standard...*Id.* at 2. Counsel provides no evidence to substantiate that the applicant's spouse, a manager for a janitorial service, would not be able to assume a similar position, relatively comparable in pay and responsibilities were he to relocate to Mexico, his birth country. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, although the applicant's spouse contends that [redacted] educational development would suffer greatly if the family were to relocate to Mexico, no corroborating evidence has been provided to document that the applicant's child's learning disabilities would worsen in Mexico to an extent that would cause extreme hardship to the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 [redacted]*, 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the

United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.