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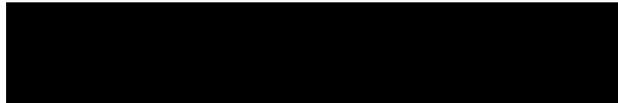
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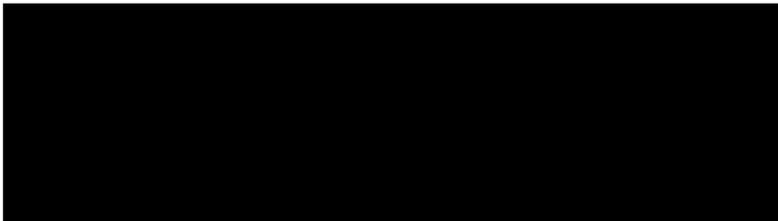
IN RE: Applicant:



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.

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 attempted to procure entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant attempted entry to the United States on November 4, 1996 by presenting a Resident Alien Card lawfully issued to another person. 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 27, 2005.

In support of the appeal, counsel submits a brief, dated November 23, 2005 and letters from medical and mental health professionals with respect to the applicant's spouse's physical and mental conditions. 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...

A waiver of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the

only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's spouse. 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 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.

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.

To begin, counsel for the applicant asserts that the applicant's spouse will suffer significant mental health hardships were she to accompany her spouse to Mexico. As counsel documents, the applicant's spouse suffers from depression, anemia and gastritis. [REDACTED] states that the applicant's spouse "...is currently under my care for treatment of depression and has been seeing me for this issue since 06/18/2004. The patient is established with a therapist and is currently on medication. I feel that it would be detrimental to this patient's emotional health for her to interrupt either her psychotherapy or her medical management. I feel an enforced relocation to a foreign country to accompany her husband would be calamitous to her from a mental health view point..." *Letter from [REDACTED] Health Care Partners Medical Group.* [REDACTED] MA, MFT, CTS, echoes [REDACTED] As [REDACTED] I am the treating mental health profession (sic) for the above named client. She is under my care for depression. I began

seeing her on 10-17-05 and we are continuing on a weekly basis. She also has symptoms of trauma from her previous stay in Mexico immediately following her marriage and the health-care problems she had while residing there. I feel that moving back to Mexico would have severe consequences for her mental and physical health at this time. I do not yet know if she can recover enough to keep her from the mental and physical problems recurring should she be forced to return to Mexico..." *Letter from [REDACTED] MFT, CTS, Marriage and Family Therapist and Certified Trauma Specialist, dated November 1, 2005.*

In addition to the applicant's spouse's above-referenced diagnosis of depression, the applicant's spouse has also been diagnosed with "...an illness named peptic acid from the high digestive colon and probably secondary anemia predisposition because of bad nutrition habits and not favorable ill feelings. She was observed with anti depressed and anti ulcerative treatments until she went back to her natal place..." *Letter from [REDACTED] dated February 20, 2004.*

Counsel also asserts that the applicant will suffer emotional hardship if she were to permanently relocate to Mexico with the applicant, as she would be forced to leave her home country, her immediate relatives, including her parents and her sister, all U.S. citizens, her medical and mental health team, and her long-term employment as a program assistant.

Based on the documentation provided, the AAO finds that the applicant's spouse would experience extreme hardship were she to relocate to Mexico with the applicant. Based on her mental and physical conditions, and the fact that these conditions worsened while the applicant's spouse resided temporarily with the applicant in Mexico and improved upon her return to the United States, the AAO concludes that a permanent return to Mexico, away from her home country, her familial support network and her medical and mental health team, would create extreme hardship to the applicant.

However, it has not been established that the applicant's spouse would suffer extreme hardship were the applicant to return to Mexico while she remained in the United States. There is no documentation establishing that the applicant's spouse's emotional, financial, physical and/or psychological hardship would be any different from other families separated as a result of immigration violations. Moreover, no objective evidence has been provided to establish that the applicant's spouse's mental and physical conditions would worsen were the applicant removed from the United States. Finally, it has not been established that it would be an extreme hardship for the applicant's spouse to visit the applicant, whether in Mexico or in any other country to which the applicant relocates, on a regular basis, as both the applicant and the applicant's spouse have been gainfully employed.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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).* 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, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he 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.