

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

Ha



FILE: [REDACTED]  
(CDJ 2004 649 355 relates)

Office: CIUDAD JUAREZ, MEXICO

Date: SEP 20 2007

IN RE: Applicant: [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:

SELF-REPRESENTED

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 Officer in Charge, Ciudad Juarez, Mexico, 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, pursuant to the record, admitted on March 7, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that she had entered the United States in December 2002 by presenting another person's Border Crossing Card; the record reflects that the applicant remained in the United States until March 2003, when she returned to Mexico.

The officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B)(i)(I) of the Act, which provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States...prior to commencement of proceedings...and again seeks admission within 3 years of the date of such alien's departure or removal...is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 18, 2002.

Based on a thorough analysis of the record, it has not been established that the applicant is subject to inadmissibility as an alien unlawfully present. The record indicates that the applicant was in the United States from December 2002 until March 2003, when she voluntarily departed the United States. The referenced period is not in excess of 180 days. As such, the basis of inadmissibility that applies to the applicant is 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, as the applicant used

another individual's immigration documents to enter the United States in December 2002. The applicant is married to a naturalized 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.

In support of the appeal, the following documents are provided: a statement from the applicant's spouse, a naturalized U.S. citizen, dated December 12, 2005; a letter from the applicant's spouse's sister, dated December 12, 2005; and copies of the Marital Settlement Agreement and the Child Custody, Visitation and Child Support Agreement between the applicant's spouse and his former spouse. 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 record contains several references to the hardship that the applicant's child would suffer if the applicant's waiver of inadmissibility is not granted. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or his children cannot be considered, except as it may affect the applicant's spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

To begin, the applicant's spouse states that "...My whole family lives in Fremont [where the applicant's spouse resides] and Hayward, California, and I have no close relatives in Mexico. My mother and siblings, are all legal residents and are a big part of my life...If I were to move to Mexico...I would lose years of work and sacrifice that I have invested in my business. I own a successful concrete contracting company, and I have contracts with city departments and private companies. At the time I married, I had 10 employees. Although I have worked very hard these two years, I have also traveled to Mexico several times to visit Araceli [the applicant] and my baby. As a result of my time away, my business has suffered, and I had to lay off more than half of my workforce. I currently employ 4 people, who depend on me and my company for their livelihoods. I even employ my father, who is 59 years old and would find it difficult, if not impossible to find a job at this age...In addition to my employees being out of work, I would be left with no source of income...I have no prospects for work in Mexico." *Letter from* [REDACTED] dated December 12, 2005.

The applicant's spouse's sister, [REDACTED] writes a letter in support of the applicant's request for a waiver of inadmissibility. As [REDACTED] states, "...I am one of [REDACTED] [the applicant's spouse's] sisters. There are a total of nine siblings in our family, three boys and six girls...We are all constantly looking after each other's well being. [REDACTED] company has...suffered a great deal. He has had to lay off several employees of his already small company...It is extremely vital that [REDACTED] keeps his company up and running since my Dad is one of his employees and [REDACTED] company is the only means of income for both my parents. If [REDACTED] was to relocate to Mexico, it would be literally impossible for my Dad to find another job. The job market is practically impossible for a 59-year-old man to start all over again specially in construction, which is what my Dad has worked in for the past twenty years..." *Letter from* [REDACTED] dated December 12, 2005.

The record does not contain any corroborating evidence of the applicant's spouse's business, such as financial documentation confirming its viability and profitability and level of hiring, and documentation that confirms that without the applicant's spouse's full-time presence in the United States, the business will not survive. Moreover, no evidence has been provided to document the applicant's spouse's father's employment with said company and his inability to obtain comparable employment elsewhere. In addition, the record reflects that the applicant's spouse has eight siblings; it has not been established that they are unable to assist the applicant's spouse's parents with their financial well-being. Finally, it has not been established that the applicant's spouse, involved in concrete contracting, would not be able to find a similar position, with comparable pay, in Mexico, thereby providing the financial support that the applicant's spouse and his family require.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . .

simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.

In addition, the record fails to establish that the applicant’s spouse will suffer extreme hardship were the applicant to remain in Mexico. The applicant’s spouse states that if the applicant is not able to reside in the United States, he will be forced to live apart from the applicant and his child, which is very “...depressing and distressing to me...I am devastated at the thought that I will continue to live without my wife and daughter. I will not develop the bonds that a father and child should have. I will be a stranger to my daughter, and that breaks my heart...” *Letter from* [REDACTED] at 2. There is no documentation establishing that the applicant’s spouse’s financial, emotional or psychological hardship would be any different from other families separated as a result of immigration problems. Moreover, no objective evidence is provided to corroborate the applicant’s spouse’s statements regarding his depression and distress, such as statements from a professional in the medical field documenting that the applicant’s spouse is suffering from a medical condition due to the applicant’s absence. 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)).

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 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.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse will face extreme hardship if the applicant remains in Mexico. The record demonstrates that the applicant’s spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission.

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.