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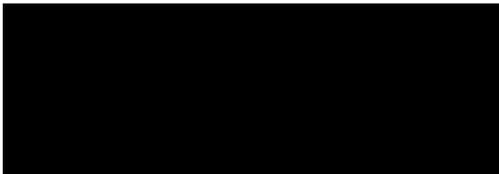
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
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U.S. Citizenship
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FILE:



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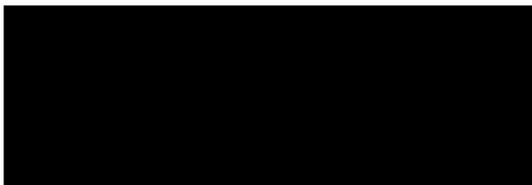
Date: SEP 24 2007

IN RE:



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 Acting District Director, Phoenix, Arizona, 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 on September 10, 1989. The applicant is married to a U.S. citizen and has three 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 acting district director concluded that the applicant failed to show that her spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the Acting District Director*, dated October 31, 2005.

On appeal, counsel asserts that the acting district director erred in denying the waiver sought under section 212(i). Counsel asserts that the decision failed to properly apply the relevant legal standards, the applicable case law was mischaracterized, the positive factors for granting the waiver were downplayed and the negative factors were over-emphasized. Counsel submits additional documentation to show extreme hardship. *Form I-290B*, filed November 28, 2005.

The record indicates that on September 10, 1989, the applicant attempted to enter the United States at the San [REDACTED] Port of Entry by falsely claiming U.S. citizenship and presenting a U.S. birth certificate in the name of a [REDACTED].

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. Because the applicant's false claim occurred before September 30, 1996, she is eligible to apply for a waiver pursuant to section 212(i) of the Act.

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.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

This matter arises in the Phoenix 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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite the respondent’s testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse. See also *Babai v. INS*, 985 F.2d 252 (6th Cir. 1993) (failure to consider hardship to U.S. citizen child if he remained in the United States is reversible error). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case. 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.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. Counsel states that the applicant’s spouse came to the United States when he was eighteen years old and he has no family or contacts in Mexico. Counsel’s Brief, dated December 22, 2005. The applicant’s spouse submitted a list of family members living in the United States and copies of documentation showing their status in the United States as lawful permanent residents. The record indicates that the applicant’s spouse is employed as a plumber and in 2004 earned \$26,682. To demonstrate employment conditions in Mexico, counsel submits: an article entitled, “NAFTA’s Legacy—Profits and Poverty”, published in the *San Francisco Chronicle* on January 14, 2004; “Poverty and Economic Reforms: Public Policies in Mexico from a Comparative Perspective with Chile and South Korea,” by [REDACTED] [REDACTED] “Trade Brings Riches, but Not to Mexico’s Poor,” published in the *Washington Post* on March 22, 2003; “The Plague of Graft,” published in the *Houston Chronicle* in 2000; the 2003 State Department Country Reports on Human Rights Practices, Mexico; the CIA World Fact Book Report on Mexico; the Library of Congress Country Studies, Mexico; and three newspaper articles translated from *Nacional Tribuna*. The AAO notes that the *San Francisco Chronicle* article, the comparative study, the Human Rights Report and the CIA World Fact book give general reports about conditions in Mexico that do not pertain to the applicant’s spouse’s situation as a skilled laborer. The Library of Congress report on Mexico states that the country’s continued inability to create sufficient employment opportunities for its labor force has produced high levels of unemployment and underemployment and has required aggressive survival strategies among Mexico’s poor. The report also states that 60 percent of the population fall within the lower sector of the Mexican economy and that industrial workers have seen a decline in their share of the national income. However, this same article indicates that industrial workers in Mexico have the most favored situation among the 60 percent, reflecting, “Their higher wage scale and membership in the health care

system and retirement or disability programs of the Mexican Institute of Social Security.” The reports and articles submitted do not show that a skilled laborer, with a similar skills set as the applicant’s spouse’s, would not be able to find employment in Mexico. Thus, the AAO finds that the evidence submitted does not establish that the applicant’s spouse will experience hardship that rises to the level of extreme as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant’s spouse states that the applicant is the caretaker for their three children. He states that he cannot provide the care his children need. He also states that he cannot imagine leaving his children in the care of a stranger. *Spouse’s Statement*, dated December 19, 2005. The AAO notes that no documentation was submitted to show that the applicant’s spouse’s family, including his parents, sister and brother-in-law, could not help in caring for the children in the event that the applicant is removed to Mexico. The applicant’s daughter states that it would be hard for her father to be both a mother and a father to her and her siblings. *Daughter’s Statement*, undated. In support of these hardships, counsel submitted a psychological evaluation from [REDACTED] of MFT Services in Yuma, Arizona. Dr. [REDACTED] met with the applicant and her family on November 21, 2005. He concluded that the stress and anxiety caused by the applicant’s immigration status has generated into a post-traumatic stress reaction for the applicant’s spouse. [REDACTED] *Report*, dated December 21, 2005. He finds that the applicant’s spouse’s symptoms include: anxiety, worry, depressed moods, avoidance behaviors, poor concentration and sleep disturbance. *Id.* His diagnosis is that the applicant is suffering from Post Traumatic Stress Disorder, Adjustment Disorder with Mixed Anxiety and Depressed Mood and Psychosocial Stressors. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on one interview with the applicant and his family. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship between the applicant’s spouse and a mental health professional and are of diminished value to a determination of extreme hardship. The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal and does not establish that the difficulties he would face rise 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.