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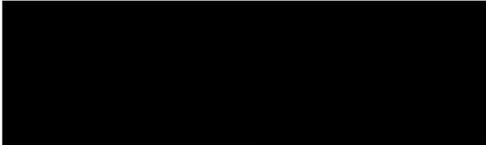
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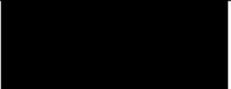
U.S. Citizenship  
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712



FILE:



Office: LOS ANGELES DISTRICT OFFICE  
(relates)

Date: FEB 27 2008

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 District Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant were required to return to Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the record establishes that she attempted to enter the United States, fraudulently, on March 28, 1989. In an effort to misrepresent herself as a citizen of the United States and gain entry, she presented an immigration officer with the birth certificate of another person. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her name and citizenship status) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute her inadmissibility; rather, she is filing for a waiver of her inadmissibility.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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.

The record contains several references to the hardship that the applicant's children would suffer if the applicant were to depart the United States. 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. Congress 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 husband is the only qualifying relative, and hardship to the applicant or her children cannot be considered, except as it may affect the applicant's husband. 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).

In this case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the waiver application is denied, regardless of whether he joins her in Mexico or remains in the United States without her.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held 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.

Additionally, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 (9<sup>th</sup> Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> 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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The record reflects that the applicant's husband is a forty-one-year-old citizen of the United States. He has been a citizen since May 25, 2000. He and the applicant have been married since November 7, 1991 and have three children, all of whom are citizens of the United States.

The record contains two affidavits from the applicant's husband. In his first affidavit, dated September 13, 2005, the applicant's husband asks for forgiveness for his wife's misrepresentation; states that the children need their mother; and states that the applicant is an excellent person with good moral character.

In his second affidavit, dated February 8, 2006, the applicant's husband states that he and the children depend upon the applicant; that they have a wonderful family; that he works hard and has never asked for anything from the government; that the applicant does not depend on the government; that separation from the applicant would destroy the family; that the applicant is a person of good moral character; and that he hopes that the family's nightmare will end.

The record also contains an evaluation from [REDACTED] dated January 28, 2006. [REDACTED] states that the family is loving, close-knit, financially stable, and economically self-sustaining. She also states that, since learning of the possibility of their mother's deportation, the children appear to have been suffering from acute distress.

The record also contains letters regarding the applicant's good moral character from friends and pastors.

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."); *Shoostary 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. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all

that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”)

As noted previously, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to Mexico, regardless of whether he joins her in Mexico or remains in California without him. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 husband will face extreme hardship if the applicant relocates to Mexico without him. The record does not demonstrate that he faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Mexico, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law.

Nor does [REDACTED] evaluation establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation appears to be based on a single interview between the applicant’s family and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

Nor has the applicant established that her husband would face extreme hardship if he joined her in Mexico, as the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. Diminished standards of living, separation from family, and cultural adjustment are to be expected in the applicant’s husband’s situation. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the



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Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.