

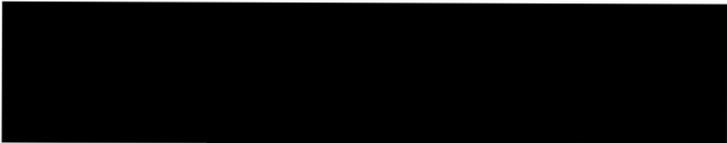
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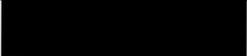
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES, CA Date:

FEB 29 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 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 January 12, 1996. The applicant is married to a lawful permanent resident 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 district director found that the record established that the applicant's family would experience considerable hardship as a result of the applicant's inadmissibility, but that this hardship did not rise to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated December 28, 2004.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the following factors must be considered in her application: the ages of the applicant and her spouse's; length of residence in the United States; family ties in the United States; health conditions; country conditions in Mexico; financial status; other means of adjustment of status; immigration history of the applicant; and the applicant's position in the community. *Counsel's Letter*, dated January 26, 2005.

The record indicates that on January 12, 1996, at the San Ysidro Port of Entry, the applicant presented a valid photo-altered Mexican passport with a counterfeit I-551 stamp for temporary residence belonging to a Gabriela Hernandez Morales in an attempt to gain entry into the United States.

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 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. 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 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 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); *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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico and 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.

In his letter submitted on appeal, counsel outlines the factors to be considered in evaluating extreme hardship to the applicant's spouse. He states that the applicant is 38 years old and the applicant's spouse is 40 years old, that the applicant's spouse has resided in the United States since he was 21 years old, that the couple has been together for eighteen years and that the applicant's spouse's immediate family lives in the United States. *Counsel's Letter*, dated January 26, 2005. Counsel asserts that the applicant's spouse would suffer

psychologically as a result of being separated from the applicant and seeing his children suffer as a result of being separated from their mother. Counsel also asserts that the applicant's spouse would suffer extreme hardship if he relocated the family to Mexico because they do not have family ties in Mexico and the economic conditions in Mexico would make it difficult for him to find employment and support his family. Counsel states that the applicant's spouse has been working as a carpet installer for approximately seven years and earns about \$850.00 per week. *Id.*

The applicant states that she is the caretaker of her children and provides for all of their needs while her spouse is at work. *Applicant's Statement*, dated March 7, 2003. She also states that her children will suffer if they move to her village in Mexico because in her village it is difficult to survive, there is not a lot to eat, there is only one school and she and her spouse would not be able to find employment. *Id.* The record also includes letters from the applicant's children, which support the statements made by the applicant that she is their main caretaker. The children's letters also indicate that the applicant is a very important part of their lives and a strong source of emotional support. The applicant's spouse states that his wife is the main caretaker for their children and that relocating to Mexico would cause an extreme hardship to their children because of the country conditions in Mexico and his inability to find employment. *Spouse's Statement*, dated March 7, 2003.

The record includes psychological evaluations for the applicant's spouse and his children. The applicant's spouse's evaluation was done on September 11, 2003 to assess the possible impact of his permanent separation from the applicant. *Spouse's Psychological Evaluation*, dated September 12, 2003. [REDACTED] the psychologist who conducted the evaluation, concludes that the applicant's spouse is in the "Severe Range" of depression according to the Beck Depression Inventory. She states that having these elevated levels of depression and anxiety could easily lead to suicidal ideations if these levels increase and that being separated from his spouse and children would surely increase these levels. [REDACTED] also concludes that the applicant's spouse is in the "Moderate Range" for anxiety according to the Beck Anxiety Inventory and that he is experiencing considerable distress. She finds that the applicant's spouse reported more problems with anxiety and depression than typically reported by men aged 18 to 59. She concludes that if the applicant must return to Mexico, the applicant's spouse will experience increased levels of anxiety and depression, creating a tremendous hardship to him and his family. She recommends that the applicant stay in the United States with her children and her spouse. *Id.* The record also includes Dr. [REDACTED] evaluations of the applicant's three children, which reach conclusions similar to those reached in the evaluation of the applicant's spouse. However, as previously noted, the impact of the applicant's inadmissibility on her children is not considered in section 212(i) waiver proceedings, except as it affects the applicant's spouse. The AAO notes that [REDACTED] does not assess how the hardship experienced by the applicant's children as a result of their mother's inadmissibility would affect the applicant's spouse.

The AAO notes that although the input of any mental health professional is respected and valuable, the submitted evaluations are based on single interviews of the applicant's spouse and his children. Accordingly, the conclusions reached in the evaluations do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship.

The record also includes the section on Mexico from the 2001 State Department Country Reports on Human Rights Practices and a State Department Consular Information Sheet for Mexico, dated November 20, 2002. The AAO notes that although this documentation gives a general overview of the conditions in Mexico, neither speaks to the specific situation of the applicant and her spouse. The reports do not establish that the applicant's spouse could not find employment upon relocation to Mexico or that he would be unable to send his children to school or provide them with medical care if the family moved to Mexico.

The AAO finds that the current record does not reflect that the applicant's spouse would suffer hardship that would rise to the level of extreme hardship as a result of her inadmissibility. The applicant has not demonstrated that her spouse would experience difficulties or disruptions beyond those commonly experienced when a family member is removed from the United States. Furthermore, the current record does not reflect that relocating to Mexico would cause the applicant's spouse 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.