

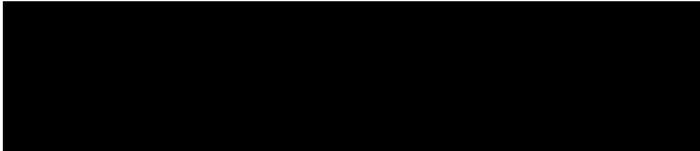
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date: JAN 25 2008

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 14, 2005.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(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.

Counsel states that the applicant did not commit fraud in order to gain entry into the United States. However, the Record of Sworn Statement dated December 7, 2004 and signed by the applicant reflects that the applicant admitted to presenting to an immigration officer some time in 1991 a visa that did not belong to her in order to gain admission into the United States. The record therefore supports the finding that the applicant willfully misrepresented a material fact, her true identity, so as to gain admission into the United States; accordingly, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

A section 212(i) waiver of the bar to admission resulting from 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. Hardship to the applicant and his children are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains income tax records; letters; a mortgage invoice; birth certificates; a marriage certificate; employment letters; and other documents.

On appeal, counsel states that district director failed to consider hardship to the applicant’s two children, her payment of taxes, her financial contribution to the household, her homeownership, her health problems, and lack of employment in Mexico.

The December 31, 2004 letter by [REDACTED] State Representative, 83rd District, indicates that Ms. [REDACTED] is involved in the education of her two children, and is the only person in the household earning continuous wages as her husband’s employment is seasonal. She states that [REDACTED] financial contribution aids in paying the mortgage, utilities, and groceries.

The October 21, 2004 letter by [REDACTED] states that [REDACTED] is a member of the Sacred Heart Parish and her sons are active in the church.

The December 20, 2004 letter from [REDACTED], a teacher with Aurora East Schools, states that Ms. [REDACTED] is active in the education of her son, [REDACTED]. The December 21, 2004 letter by [REDACTED] conveys that [REDACTED] son, [REDACTED] is a good student.

The December 21, 2004 letter by [REDACTED] CEO, states that [REDACTED] has been employed with Thrift an Dollar, Inc. since March 1, 2004 and that she works 40 hours weekly, earning \$7.50 per hour.

The December 20, 2004 letter by [REDACTED] of [REDACTED] indicates that the applicant's husband has been employed there since March of 1999, and that he earns \$20.50 per hour and works 55-60 hours each week. The letter conveys that his active employment usually starts March 1 and ends December 31, weather permitting.

The medical records of the applicant do not specifically indicate that she has hypothyroidism that requires ongoing treatment and medication. It is noted that the handwritten document is not legible.

The birth certificates reveal that the applicant's sons are 12 and 20 years old.

The mortgage invoice shows the monthly payment due of \$1,156.77 and the property tax invoice reflects annual taxes of \$3,382.02.

The record fails to establish that the applicant's husband would experience extreme hardship if he remained in the United States without the applicant.

The record shows that [REDACTED] contributes to the family's household income; however, it fails to show that her husband would be unable to meet monthly household expenses without her financial assistance. Furthermore, although [REDACTED] employer indicates that [REDACTED] is not employed year-round, no evidence has been presented to show that during the periods of unemployment [REDACTED] is not able to meet household expenses. 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)).

With regard to family separation, courts in the United States have stated that "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).

However, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as

it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shoostary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if he 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 as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shoostary*, *Perez*, and *Sullivan*, *supra*.

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined the applicant in Mexico.

Counsel states that the applicant's children, who have been raised in the United States and attend American schools, will experience extreme hardship in Mexico. She states that the children know no other way of life and that the adjustment to a new country, without knowing whether their mother will obtain employment to provide for them in a manner similar to what they are accustomed to in the United States, must be considered.

As previously stated, although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by her husband, as a result of his concern about the well-being of his children, is a relevant consideration.

The AAO finds that court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *In re Kao*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American lifestyle, the BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the circuit court stated that “imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language,” must be considered in determining whether “extreme hardship” has been shown. In *Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The record here establishes that the applicant's wife has a U.S. citizen child who is of school age. Although no documentation in the record indicates that her 12-year-old son is not academically fluent in the Spanish language, even if he were not proficient in the Spanish language, a finding of extreme hardship to the applicant's son with regard to his education is not sufficient, in itself, to establish extreme hardship to Mr. [REDACTED] if he were to join his wife in Mexico; additional hardship factors are missing.

Counsel states that the applicant will not be able to find employment in Mexico. Court decisions have shown that difficulties in securing employment and the hardships that are a consequence of this such as a lower standard of living and health care are insufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (a significant reduction in the standard of living is not by itself a ground for relief); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship).

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed