

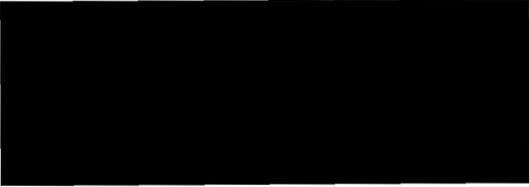
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX (LAS VEGAS) Date: NOV 04 2008
[REDACTED] [consolidated therein]

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.

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, Phoenix, Arizona, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant 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 attempting to enter the United States by presenting a counterfeit Resident Alien Card in someone else's name. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident spouse and daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated June 6, 2006.

On appeal, the applicant's husband claims that he will suffer extreme hardship if the applicant is removed from the United States. *Attachment to Form I-290B*, filed July 10, 2006.

The record includes, but is not limited to, letters from the applicant's husband, federal income tax returns, and a Mexican marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that on July 18, 1997, the applicant's lawful permanent resident husband filed a Form I-130 on behalf of the applicant. On September 29, 1997, the applicant's Form I-130 was approved. On November 25, 1998, the applicant attempted to enter the United States by presenting a counterfeit Resident Alien Card in someone else's name. On the same day, the applicant was expeditiously removed from the United States. On September 21, 2002, the applicant reentered the United States with a V-1 nonimmigrant visa, with authorization to remain in the United States until September 20, 2004, and she has not departed since this entry. On July 19, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 2, 2006, the applicant filed a Form I-601. On June 6, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's husband states he will suffer extreme hardship if the applicant is removed from the United States. *See attachment to Form I-290B, supra*. The applicant's husband states the applicant helps care for his disabled father, who resides with them. *Id.* The AAO notes that it has not been established that the applicant's husband has no other family in the United States who could help care for his disabled father. The applicant's husband states the applicant "sends money to her parents in Mexico. She helps with groceries and medical bills that are not covered by Social Security." *Id.* The AAO notes that it has not been established that the applicant could not obtain employment in Mexico that would allow her to continue to help her parents with their finances. The applicant's husband states he "could not support [his] daughter, [his] wife, [his] father and [himself], without [the applicant's] assistance." *Id.* The AAO notes that there was no documentation submitted establishing that the applicant's husband will be unable to find a job in

Mexico, and be unable to help provide support to his father. Additionally, the applicant's husband is a native of Mexico, who spent his formative years in Mexico, he speaks Spanish, and it has not been established that he has no family ties in Mexico. The applicant's husband states "[their] child will probably be able to get accustomed to residing in Mexico because she is young." *Id.* The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to Mexico.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, in close proximity to his father and maintaining his employment. The applicant's husband states the applicant told him "that if she is deported from the United States, she wants [their] child and [him] to stay and live in the United States." *Id.* As a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's husband is the primary wage earner in the family, and the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan*, *supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's lawful permanent resident husband 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 removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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(a)(6)(C)(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.