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Services

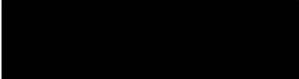
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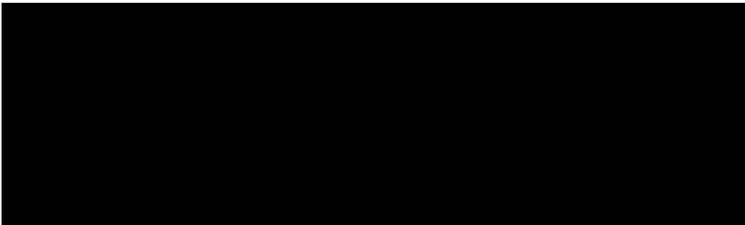
Applicant:



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.

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 Field Office Director, Sacramento, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 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 and reside with her permanent resident husband.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Filed Office Director*, dated June 3, 2008.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated June 30, 2008.

The record contains a brief from counsel in support of the appeal; statements from the applicant's husband and daughter's; documentation in connection with the applicant's husband's prescription medication; a list of the applicant's monthly household expenses; a letter verifying the applicant's husband's employment and earnings; copies of permanent resident cards for the applicant's husband, siblings, daughters, and mother; a copy of the applicant's father's naturalization certificate; copies of documents in connection with the applicant's prior visa application, and; a copy of the applicant's marriage certificate. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on April 1, 1998 the applicant applied for a visitor's visa at the U.S. Embassy in Guadalajara, Mexico using an altered pay stub. In her application, she further misrepresented her marital

status as single, when she was in fact married on the date of application. Thus, the applicant attempted to procure a visa by fraud or misrepresentation. 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 contest her inadmissibility on appeal.

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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only directly relevant hardship in the present case is hardship suffered by the applicant's husband or parents. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband or parents would possibly remain in the United States if the applicant departs. Separation of family will be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel* at 3-4. Counsel indicates that the applicant's husband has spent the last 24 years in the United States, and that he would suffer hardship if he returns to Mexico with the applicant. *Id.* Counsel explains that the applicant's husband supports his family economically, and he would have difficulty doing so in Mexico. *Id.* Counsel states that the applicant's husband has three permanent resident daughters who would also suffer hardship should the applicant be prohibited from remaining in the United States, thus creating additional hardship for the applicant's husband.

*Id.* Counsel asserts that all factors of hardship to the applicant's husband must be considered in aggregate. *Id.*

The applicant's husband states that he has been in the United States since 1985, and he has held the same employment as a truck washer for eight years. *Statement from Applicant's Husband*, dated June 30, 2008. He provided that he would be unable to find comparable employment in Mexico should he relocate with the applicant, thus he would be unable to continue to support his family as he currently does. *Id.* at 2. He explains that he met the applicant 25 years ago, they have three daughters, and they share a close emotional bond. *Id.* at 1. He states that the applicant takes care of their three daughters, and that she is directly responsible for their success. *Id.* at 1-2. The applicant's husband provides that his daughters would have difficulty if they relocate to Mexico, as only one speaks Spanish proficiently, and their schooling would be interrupted or of lesser quality. *Id.* at 2. The applicant's husband explains that he has four brothers and five sisters in Mexico, and that he and his two siblings in the United States send money to them. *Id.* at 2-3. He states that this arrangement reflects that his relatives in Mexico are unable to help him should he return there. *Id.* The applicant's husband further indicates that he has been diagnosed with gout for which he takes medication, and that the applicant assists him by preparing a special diet and reminding him to take his medication. *Id.* at 3. The applicant's husband emphasizes the emotional difficulty he and his family would endure should they be separated. *Id.* In a prior statement, the applicant's husband explained that approximately 10 years ago he was working in the United States while the applicant and their daughters resided in Mexico, and after 10 years of residing together as a family in the United States, becoming separated again would create significant emotional hardship. *Prior Statement from Applicant's Husband*, dated March 7, 2008.

Upon review, the applicant has shown that her husband will experience extreme hardship should she be prohibited from remaining in the United States. This finding is primarily based on the long duration that the applicant has resided in the United States with her husband and daughters as a close family unit, and the length of time the applicant's husband has resided and built his life in the United States. *See Salcido-Salcido*, 138 F.3d at 1293.

Should the applicant depart the United States, and her husband remain in the United States, her husband would experience extreme hardship. Prior to the applicant's arrival, the applicant's husband worked in the United States to provide for the applicant and their daughters in Mexico. The applicant's husband expressed that he continued in this arrangement for years until the applicant and their daughters could join him in 1998. Their family was unified in the United States in 1998, and they have lived as a close unit for the last 10 years. The applicant's husband has clearly expressed that he is close with applicant, and thus he would experience significant emotional hardship should he again be separated from her as before. The record reflects that the applicant cares for her three daughters, ages 17, 15, and 13, and thus the applicant's husband would experience hardship should he be left in the United States to care for them alone. The applicant's husband indicated that he relies on the applicant for assistance with his medical condition, gout. Though the applicant has not shown that her husband cannot meet his health needs without her, her husband's statement in this regard further reflects the interdependence within their household. The applicant does not work, thus her husband does not rely on her for economic contribution to the household. However, it is understood that relocating to Mexico and maintaining two households would result in additional expense to the applicant and her husband.

The record contains references to hardships to the applicant's three daughters. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative.

The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his daughters' loss of the applicant's daily presence. This hardship is duly considered in assessing the total hardship to the applicant's husband.

The applicant has shown by a preponderance of the evidence that the hardships to her husband should he remain in the United States without her, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members separated as a result of deportation. *See e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant's husband stated that he and the applicant decided that they will live separately should she be compelled to depart the United States, as he will remain and continue to care for their children and provide for the family's economic needs. The AAO finds that the applicant's husband would experience extreme hardship should he return to Mexico. He has resided in the United States for approximately 23 years and raised his daughters here for the last 10 years, thus he has a strong tie to the United States. He has held employment with the same company for over eight years, thus he has achieved economic stability. He has a permanent resident brother and sister in the United States, thus he has family ties outside of his immediate family. The applicant's daughters have each lived in the United States for most of their lives, thus they would endure significant hardship should they relocate to Mexico, which would reasonably have an emotional impact on the applicant's husband. If he relocated to Mexico, the applicant's husband would be compelled to relinquish his steady employment and reestablish a career in a weaker economy where he would be unable to earn comparable compensation to support his family.

The applicant has shown by a preponderance of the evidence that the hardships to her husband should he relocate to Mexico, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members who relocate abroad as a result of the deportation of a spouse. *See e.g., Hassan*, 927 F.2d at 468.

Based on the forgoing, the AAO finds that the applicant's husband will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is required to depart the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General

(now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant knowingly submitted a visa application with fraudulent documentation and a misrepresentation of her marital status to circumvent the immigration laws of the United States, entered the United States without inspection and has periods of unauthorized presence.

The positive factors in this case include:

The applicant has significant family ties to the United States, including her husband, three daughters, sister-in-law, and brother-in-law; the applicant's husband would suffer extreme hardship if the applicant is compelled to depart the United States; the applicant cares for her three permanent resident children and maintains a stable household in the United States, and; the applicant has not been convicted of any crimes.

The positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

**ORDER:** The appeal is sustained.