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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H/2



FILE:



Office: LOS ANGELES

Date:

APR 06 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 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.

The district 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 District Director*, dated October 24, 2006.

The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, however the individual who submitted the Form G-28 is not an attorney or authorized representative as defined in 8 C.F.R. § 1.1(f) and as required by 8 C.F.R. §§ 103.2 and 292.1. All submissions will be considered but the decision will be furnished only to the applicant.

On appeal, the applicant contends that her husband will suffer extreme hardship if she is compelled to depart the United States. *Statement from the Applicant*, dated November 8, 2006.

The record contains statements from the applicant and the applicant's husband; medical documentation for the applicant's husband; birth certificates for the applicant's children; a copy of the applicant's husband's permanent resident card; a copy of the applicant's marriage certificate; tax and employment documentation for the applicant and her husband, and; an explanation from the applicant regarding her attempted entry to the United States using a fraudulent document. 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 applicant stated that she attempted to enter the United States using a fraudulent document. *Statement from the Applicant* at 1. She explained that she was detained and returned to Mexico. *Id.* Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act 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 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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's permanent resident 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).

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).

On appeal, the applicant contends that her husband will suffer extreme hardship if she is compelled to depart the United States. *Statement from the Applicant* at 1. The applicant explains that she and her husband have two U.S. citizen children, ages six and four months. *Id.* She states that her husband has been diagnosed with grand mal epilepsy, and that he will require medication for his entire life. *Id.* She explains that she has had to take her husband to the hospital on several occasions. *Id.* at 2. She contends that her husband would be unable to obtain required medication should they relocate to Mexico. *Id.* She suggests that her children would experience hardship should something happen to her husband when she is not present. *Id.* at 1. She notes that her children are attending schools in the United States and that they would endure consequences should she be compelled to depart. *Id.*

The applicant's husband states that the applicant has "been a great support" for him since they met, and that she accepts his illness. *Statement from Applicant's Husband*, dated November 8, 2006. He asserts that he would be unable to obtain his required medication should he relocate to Mexico. *Id.* at 1. He indicates that the applicant's immigration difficulties have caused his illness to worsen. *Id.* The applicant's husband stated that it would be devastating for their family to be separated. *Prior Statement from the Applicant's Husband*, dated September 8, 2006. The applicant's husband explained that their children depend on the applicant for their care, and that he relies on the applicant to assist him due to his epilepsy. *Id.* at 1.

Upon review, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(i)(1) of the Act.

The applicant's husband has been diagnosed with grand mal epilepsy, a serious medical condition. The applicant has not provided detailed medical documentation to show the effect her husband's health status has on his ability to perform daily functions such as employment and caring for his children. The record does not reflect the frequency that the applicant's husband experiences symptoms such as seizures, or the severity of such episodes. Yet, the AAO acknowledges that suffering from epilepsy, particularly while having responsibility for children, creates a need for assistance from others. The applicant's husband contends that he relies on the applicant for such assistance.

The record reflects that the applicant's husband engages in employment, thus it is evident that he is able to perform tasks. The applicant's husband stated that the applicant provides 100 percent of their childcare needs, yet the applicant submitted evidence that she is employed which suggests her children are under the care of other individuals at some periods during the week. The applicant has not explained whether her husband cares for their children while she works, or whether she and her husband receive childcare assistance from others. Yet, the AAO finds that the applicant's husband's health condition would create significant hardship for him should he remain in the United States without the applicant and care for their children alone. The applicant's husband's health distinguishes his hardship from that which is commonly expected when spouses are separated due to inadmissibility, as he would face greater challenges that constitute extreme hardship.

However, the applicant has not shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity. The applicant's husband asserted that he would be unable to obtain required medication to treat grand mal epilepsy, yet the applicant has not shown why her husband would be unable to secure such medication or medical treatment. The applicant has not submitted any documentation that reflects treatment for epilepsy is unavailable in Mexico, or that her husband would lack sufficient funds to access such care. It is noted that the applicant's husband is a native and citizen of Mexico, thus it is evident that he would not face the challenges of adapting to an unfamiliar language or culture should he return there.

The applicant has not asserted or shown that her husband would experience economic hardship should she be compelled to depart the United States, thus she has not established that her husband would be unable to find employment and meet his economic needs in Mexico.

The applicant's husband explained that their children will experience hardship should they relocate to Mexico. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. 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. It is reasonable that the applicant's children will encounter some emotional challenges due to relocating to Mexico, or should they remain in the United States without the applicant. Yet, the applicant has not provided sufficient explanation to show that her children would endure hardship that would have a significant impact on her husband, thus elevating his hardship to extreme hardship. However, the AAO gives due consideration to the additional challenge the applicant's husband would endure due to adjustment difficulties faced by his children.

All elements of hardship to the applicant's husband have been considered individually, and in aggregate. Based on the foregoing, the applicant has shown that her husband would experience extreme hardship if he remains in the United States without the applicant. Yet, the applicant has not provided sufficient documentation to show that her husband will experience extreme hardship should he depart with the applicant to maintain family unity. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(i)(1) of the Act. 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)(1) 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.