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



**U.S. Citizenship  
and Immigration  
Services**

**H2**

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA

Date: **APR 06 2009**

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,  
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[Redacted]

**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, 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 last entered the United States without inspection in 1996. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. She 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 spouse and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director*, dated June 28, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) failed to thoroughly analyze the facts and evidence in the case, including evidence of extreme financial and emotional hardship to the applicant’s husband if the applicant is removed from the United States. *Brief in Support of the Appeal* at 2. Specifically, counsel states that CIS erred in failing to apply the appropriate standard for hardship and failing to weigh all factors related to hardship to the family, since the central purpose of the waiver is to provide unification of families. *Brief* at 3. Counsel asserts that the applicant's removal would have negative consequences for both her husband and their minor children, and states that the applicant has concentrated on raising and nurturing their two daughters while her husband has supported the family financially. *Id.* Counsel additionally asserts that if the applicant's husband were to relocate to Mexico, he would suffer extreme hardship due to loss of his employment and difficulty readjusting to life in Mexico after residing in the United States for over twenty-five years. *Brief* at 4-5. In support of the waiver application and appeal, counsel submitted the following documentation: declarations from the applicant, her husband, and their daughters; a psychological evaluation of the applicant and her family members; family photographs; a letter from the applicant’s church; school records for the applicant's daughters; an article on adolescence from the Wikipedia website; a letter from the applicant’s husband’s employer; rental receipts and copies of utility and phone bills; and information on conditions in Mexico. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 contains references to hardship the applicant's children would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a forty year-old native and citizen of Mexico who has resided in the United States since 1991. In May 1996 she attempted to enter the

United States using a fraudulent permanent resident card and was ordered excluded by an immigration judge and returned to Mexico. She returned to the United States shortly after her removal. Her husband is a forty-six year-old native of Mexico and Citizen of the United States who has resided in the United States since 1984. They have been married since 1984 and reside in Gardena, California with their two daughters, who are now nineteen and twenty-three years old.

Counsel claims that the applicant's husband would suffer emotional hardship if the applicant were removed and he remained in the United States. In support of these assertions he submitted an evaluation prepared by a psychologist who interviewed the applicant and her family members. The evaluation states that the applicant's husband found it difficult to express himself verbally during the evaluation due to an initial lack of understanding of the reasons he was asked to visit a psychologist. *Psychological Evaluation prepared by [REDACTED], dated February 4, 2004, at 4.* The evaluation states that the applicant's husband had difficulty empathizing with his family members and has been focused on his role as sole provider and traditional head of the family. *Id.* He stated during his interview that he would follow his wife if she were deported and would find it difficult to stay in the United States with his two daughters because he has never been their main caretaker. *Psychological Evaluation prepared by [REDACTED] at 5.* The evaluation concludes that the applicant's husband and daughters would find themselves in an adverse situation if they were separated from the applicant and her removal "will have significant negative consequences for both minors and for [REDACTED]" *Id.* at 13.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any diagnosis of or history of treatment for any psychological condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico due to the length of residence in the United States, lack of ties to Mexico, and economic and social conditions in Mexico. Counsel claims that due to economic conditions and high unemployment rates in Mexico and the length of time he has resided outside of Mexico, the applicant's husband would be unable to find employment comparable to the steady employment he has in the United

States and would be unable to support his family. Counsel submitted information on economic conditions in Mexico as well as the U.S. State Department *Country Condition Report for Mexico* and information on crime and access to medical care to support an assertion that the applicant's husband would suffer extreme hardship if he relocated there. In his declaration, the applicant's husband states,

My skills are in home fumigation. There is no market for home fumigation in the farming towns of Michoacan. It is an agricultural area, not the suburbs. I have no experience in farming. . . . I would have to give up everything I have had to work so hard for. *Declaration of* [REDACTED] at 6.

Counsel further states that the applicant has resided in the United States for over twenty-five years and had "severed his birth tie" and become acclimated to the United States, where he has become skilled in a trade that is not transferable to Mexico. *Brief* at 5.

The AAO notes that although counsel asserts that the applicant's husband would be unable to find employment there because of poor economic conditions, the evidence on the record is insufficient to establish that the applicant's husband would be completely unable to find work in Mexico. The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Although the applicant's husband would likely experience a decline in standard of living if he were to relocate to Mexico due to the loss of his employment in the United States and poor economic conditions there, the record does not establish that he would suffer economic hardship beyond the common results of deportation. Further, although counsel asserts that the applicant's husband has strong family ties in the United States and that has no family ties in Mexico, no evidence was submitted indicating which family members reside in the United States or the emotional effects of any separation that would result. Further, although separation from family members and community ties in the United States might cause the applicant's husband some hardship, there is no evidence on the record to establish that the effects of this separation would be more severe than that normally experienced as a result of removal. The emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Matter of Pilch, supra*.

The emotional and financial hardship the applicant's spouse would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or

inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required under section 212(i) of the Act.

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. 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.