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FILE:



Office: CIUDAD JUAREZ, MEXICO

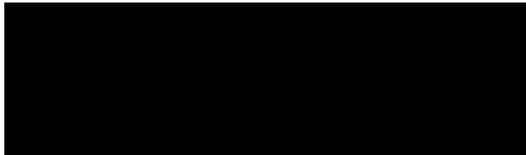
Date: **APR 14 2009**

IN RE:



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.

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 Officer in Charge, Ciudad Juarez, Mexico 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 having attempted to procure admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is the fiancée of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her fiancée and child.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 16, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) and 212(v) of the Act. *Form I-290B*.

In support of the waiver, the record includes, but is not limited to, statements from the applicant's spouse; a course completion certificate for the applicant's spouse; and an employment identification badge for the applicant's spouse. 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(iii) Exceptions.—

(I) Minors.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(v) Waiver. - The Attorney General [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

If an alien seeking a K-1 or fiancée visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé(e) is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiance (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required.* The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

The record reflects that the applicant entered the United States without inspection in September 2003 and remained until she departed voluntarily on March 30, 2004. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated April 13, 2005. On April 9, 2004, the applicant attempted to gain admission to the United States at the bridge in El Paso, Texas by presenting a DSP laser visa. *Form I-275, Withdrawal of Application for Admission/Consular Notification; Record of Deportable/Inadmissible Alien*. The applicant was referred to secondary inspection where she admitted that her intentions were to resume her unlawful residence in El Paso, Texas. *Id.* The applicant withdrew her application for admission and returned to Mexico. *Id.*

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant accrued unlawful presence from her September 2003 entry without inspection until her departure from the United States on March 30, 2004. The AAO notes that the Officer in Charge erred in finding that the applicant had accrued unlawful presence for one year or more. Although the Officer in Charge found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act and thus barred from seeking admission within ten years of the date of her departure, the applicant is, instead, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act, for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant is thus barred from again seeking admission within three years of the date of her departure, March 30, 2004. As the applicant's departure from the United States occurred on March 30, 2004, it has been more than three years since the departure that raised the inadmissibility issue. A clear reading of the law reveals that the applicant is no longer inadmissible to the United States based on her prior unlawful presence as she is not seeking admission within three years of her departure. Based on the current facts, she does not require a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The AAO does, however, find the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act for misrepresenting herself as a nonimmigrant by presenting a DSP laser

visa at the border bridge in El Paso, Texas. Based on her presentation of this document at the port of entry, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on the U.S. citizen fiancé of the applicant. The plain language of the statute indicates that hardship that the applicant or the applicant's child would experience if the applicant's waiver request is denied is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship that would be suffered by the applicant's fiancé if the applicant's waiver application is denied. If 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 Board 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 family ties to 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 AAO notes that extreme hardship to the applicant's fiancé must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's fiancé travels with the applicant to Mexico, the applicant needs to establish that he will suffer extreme hardship. The applicant's fiancé was born in the United States. *Birth certificate*. The record does not address whether the applicant's fiancé has any familial or cultural ties to Mexico. The record does not address whether the applicant's fiancé speaks Spanish. However, the AAO notes that the applicant does not speak English. *Statement from the applicant's fiancé*, dated March 13, 2006. The applicant's fiancé states that he cannot stay with his family in Mexico because he will lose his job in the United States. *Id.* The record, however, does not establish that the applicant's fiancé would be unable to obtain employment in Mexico as it fails to include published country conditions reports or other documentary evidence demonstrating the economy and the lack of employment opportunities in Mexico. The applicant's fiancé also contends that Ciudad Juarez, Mexico is a dangerous place and that there are kidnappings and murders there, as well as people who do not respect the laws. *Id.* Again, the record fails to support this claim with documentary evidence. While the AAO acknowledges the assertions of the applicant's fiancé, it notes that going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). The applicant's fiancé works as a detention

officer in El Paso, Texas. *Id.*; *El Paso County Sheriff's Office work identification for the applicant's fiancé*. He fears that a released prisoner will see him and his family in Ciudad Juarez, Mexico and harm the applicant and his son. *Statement from the applicant's fiancée*, dated November 10, 2005. While the AAO notes the applicant's spouse's concerns, it observes that the applicant's family is not required to reside in Ciudad Juarez and does not find any documentation in the record to demonstrate that the applicant's family would be unable to live in a different part of Mexico, one where they would feel safer. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her fiancé if he were to reside in Mexico.

If the applicant's fiancée resides in the United States, the applicant needs to establish that he will suffer extreme hardship. The applicant's fiancé was born in the United States. *Birth certificate*. As previously noted, the record does not state what family members the applicant's fiancé may have in the United States. The applicant's fiancé notes that his son will suffer the most if his family is separated. *Statement from the applicant's fiancée*, undated. He states that he does not want his son to be educated in Mexico because he will have few options there. *Statement from the applicant's fiancée*, dated March 13, 2006. While the AAO acknowledges these statements, it notes that the applicant's child is not a qualifying relative for the purposes of this proceeding and the record fails to document how any hardship the applicant's child may encounter would affect the applicant's fiancé, the only qualifying relative. The AAO notes that the record does not include any documentation that indicates that the applicant's fiancé would suffer any financial hardship by remaining in the United States. The record does not include a statement from a licensed healthcare professional documenting how the applicant's fiancé would be affected psychologically if he were separated from the applicant. The record also makes no mention of any type of physical or mental health condition affecting the applicant's fiancé.

The AAO notes that U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's fiancé will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's fiancé would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her fiancé if he were to reside in 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) 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.