

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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: LAS VEGAS

Date:

AUG 13 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Las Vegas, Nevada denied the instant waiver application, which 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, the spouse of a U.S. lawful permanent resident (LPR), the mother of two LPR sons, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and sons.

The district director found that the applicant had failed to establish extreme hardship to her LPR spouse, and denied the application. On appeal the applicant contended that failure to approve the waiver application would cause severe hardship to her husband and sons. Although the applicant did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

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.

On September 6, 1998, a woman was apprehended at the San Luis, Arizona Port of Entry attempting to enter the United States using a temporary resident alien card issued to another person, [REDACTED]. The woman apprehended then gave her name as [REDACTED]. In the course of the proceedings to return her to Mexico, the apprehended woman was fingerprinted. The fingerprints are those of the applicant in this case. Photographs taken at the time, compared to photographs provided with the Form I-485 in this case, confirm that the applicant is the woman who attempted to enter the United States by misrepresenting herself to be [REDACTED], and who then subsequently misrepresented that she was [REDACTED].

The applicant's attempt to enter the United States with the identification of another person constitutes a misrepresentation that she was that other person. The misrepresentation was made in an attempt to enter the United States, and was material to that attempt. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for that material misrepresentation. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her sons is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record contains a letter, dated March 2, 2006, from the applicant's husband, who stated that the children he has with the applicant were then between 14 and 17 years old. The applicant's husband stated that those are "the most crucial [sic] times of their lives," and that "they requier [sic] the support of both parents." He did not directly address the hardship her absence would cause to him.

The record contains a letter, also dated March 2, 2006, from the applicant. In it, she stated that in the past she violated immigration laws, but that she was then trying to reunite with her family. She

further stated that, if the waiver application is approved, she will become a productive member of society. She did not address the hardship that her absence would cause her husband.

The record contains another letter from the applicant, dated January 11, 2007. In it, she stated she has an LPR spouse and two LPR children, and that it would be detrimental to her children if she is not permitted to reunite with them, and that, therefore, if she returns to Mexico her children will have to accompany her. She stated that she has no training that would enable her to obtain employment and would not be able to provide her children with an education. She noted that her children had been raised in the United States since 1998, and are now unfamiliar with Mexico. She also stated that she has no family in Mexico and no one to offer her any type of assistance if she returns. She further stated that, since the family has discussed the possibility of the applicant being obliged to return to Mexico, her younger son has developed separation anxiety. She did not directly address any hardship that failure to approve the waiver application might occasion to her husband.

The letters submitted refer to educational hardship that would be occasioned to the applicant's children if she is removed from the United States and her children accompany her. They hint at emotional hardship the children would suffer, including the separation anxiety of the younger son. They also hint at emotional hardship that would be occasioned to the children if the applicant returns to Mexico and they remain in the United States. The AAO notes, again, that hardship to the applicant's children is not directly relevant to whether waiver is available to her pursuant to section 212(i)(1) of the Act.

The AAO finds that, if the applicant is obliged to return to Mexico, her absence, in itself, would occasion emotional hardship to the applicant's husband. The AAO finds that educational and emotional hardship imposed on the applicant's children if the applicant is obliged to return to Mexico would cause the applicant's husband some emotional hardship. The evidence is insufficient, however, to show that the hardship so imposed on the applicant's husband, when considered with the other hardship factors in this case, would rise to the level of extreme hardship, whether or not the applicant's children accompanied her to Mexico.

No evidence has been submitted pertinent to the financial hardship that would be caused to the applicant's husband if the waiver application is denied, whether or not the applicant's children accompanied her to Mexico. There is no indication of the applicant's husband's income and no budget showing his expenses. Whether he would have any difficulty supporting his wife and children in Mexico is unknown to the AAO. Whether he would have any difficulty supporting his wife in Mexico and his children in the United States is also unknown.

As it would cause the applicant's husband to lose some disposable income, supporting his wife in Mexico, with or without their children, would cause some hardship the applicant's husband. If his children remained in the United States after their mother departed, caring for the children in the applicant's absence might impose some additional expenses on the applicant's husband, and therefore some hardship. In the absence of evidence on this point, however, the AAO is unable to find that the financial hardship imposed on the applicant's husband by the removal of the applicant would, when considered with the other hardship factors, rise to the level of extreme hardship.

There is no indication in the record that the applicant, the applicant's husband, or the applicant's children have any health conditions that would be exacerbated by removal of the applicant to Mexico. The AAO is unable to find that removal of the applicant to Mexico would cause the applicant's husband any health-related hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her LPR husband as required under INA § 212(i), 8 U.S.C. § 1186(i), and that waiver is therefore unavailable.

Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.