



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE: [REDACTED] Office: CHICAGO, IL

Date:

DEC 02 2009

IN RE: [REDACTED]

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 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and the matter is now before the 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 procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to 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 remain in the United States with her husband.

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 the District Director* dated May 19, 2007.

On appeal counsel for the applicant asserts that the applicant's husband would suffer extreme hardship if the applicant were removed from the United States, and U.S. Citizenship and Immigration Services ("USCIS") failed to adequately consider the hardship that would result from separation from family members. *See Counsel's Brief in Support of Appeal* at 3-4. Counsel claims that the facts in the applicant's case are similar to the facts in *Cerillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987), and further states that USCIS abused its discretion by failing to fully consider hardship to the applicant's husband caused by separation from the applicant. *Brief* at 4-5. In support of the waiver application, counsel submitted an affidavit from the applicant's husband, letters from friends and other individuals in support of the applicant, and a letter from the applicant's church. The entire record was reviewed and considered before rendering a decision in this matter.

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.

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 (9th 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 (9th 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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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.

The record reflects that the applicant is a forty-five year-old native and citizen of Mexico who entered the United States in July 1996 after presenting a Mexican passport and visa belonging to another individual. The record further reflects that the applicant married her husband, a fifty-seven year-old native of Mexico and citizen of the United States, on May 8, 1998. The applicant resides with her husband in Oak Park, Illinois.

Counsel asserts that the applicant's husband would experience extreme hardship if he relocated to Mexico with the applicant and the applicant's husband states,

I could never adjust to living life in Mexico. I have lived in the United States for 37 years, and worked all of those years to achieve what I have today. At my age, I would never dream of starting over in a different country. *Affidavit of* [REDACTED] [REDACTED] dated November 16, 2006.

The applicant's husband further states that he owns and operates his own meat distribution business, and documentation on the record indicates that he has owned this business since 1987. Income tax returns submitted with an affidavit of support indicate that the applicant's husband earned \$70,760 in

2002, \$80,300 in 2003 and \$52,125 in 2004. Letters on the record further state that the applicant's husband has donated time and products from his business for charitable causes and that he and the applicant "are very active and dedicated individuals in the community." See Letter from [REDACTED] and dated November 11, 2006.

Counsel claims that the applicant's husband would suffer extreme hardship if he relocated to Mexico, and the applicant's husband states that he would be unable to readjust to life in Mexico after residing in the United States since he was seventeen years old. The record indicates that the applicant's husband is fifty-seven years old and has spent most of his life in the United States, and he has strong business and community ties in Oak Park, Illinois, where he has owned and operated a business since 1987. The record establishes that the applicant's husband would suffer extreme hardship if he relocated to Mexico to reside with the applicant because of difficulty he would have readjusting to conditions in Mexico and the financial hardship that would result from leaving his business in Illinois and attempting to support himself financially in Mexico. This finding is based largely on his length of residence in the United States, his age, and his strong business, property, and community ties in the United States.

Counsel further asserts that the applicant's husband would suffer emotional hardship if the applicant were removed and he remained in the United States, and claims that the effects of family separation were not adequately considered when assessing the applicant's claim of extreme hardship to her husband. In support of this assertion, counsel submitted an affidavit from the applicant's husband that states that he would be devastated if he were separated from the applicant. Affidavit of [REDACTED] dated November 16, 2006. He further states, "We are a team as much in our marriage as out. She is the person I want to share the rest of my life with." Affidavit of [REDACTED]. The evidence does not establish that the difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation 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 additionally asserts that the applicant's husband would suffer financial hardship without the applicant, and the applicant's husband states that he relies on the applicant to handle various aspects of their business, including payroll, billing, and taking orders from customers. He states, "The position that [REDACTED] is one of confidence involving the handling of money, therefore I could not trust anyone else in that position." Affidavit of [REDACTED]. The AAO notes that the applicant's husband has owned his business since 1987, and the record contains no explanation of how he handled these responsibilities before he married the applicant or why he could not hire a bookkeeper or assign these duties to another employee. The record does not establish that the applicant's husband could not continue to operate his business without the applicant, or that his financial situation would be negatively affected if the applicant were removed from the United

States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission and he remains in the United States. Rather, the record demonstrates 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 emotional and financial difficulties that the applicant's husband would suffer appear 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 (9th 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 (9th 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 U.S. citizen 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.