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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CA

Date: FEB 06 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 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission (adjustment of status) to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen, has two U.S. citizen children and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, at 3, dated December 27, 1999.

On appeal, prior counsel states that the director abused his discretion and that the applicant's spouse would experience extreme hardship if the applicant was not admitted to the United States. *Form I-290B*, received January 27, 2000.

The record includes, but is not limited to, prior counsel's Form I-601 brief, the applicant's spouse's statements, a psychological evaluation of the applicant's spouse, awards for the applicant's children and country conditions information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.¹

The record reflects that on or about July 1, 1989, the applicant presented fraudulent documents in support of an adjustment of status application filed on July 1, 1989 under Section 249 of the Act. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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

¹ The AAO notes that the record includes a second unadjudicated Form I-601 filed on March 29, 2006 and all materials submitted in connection with the second Form I-601 have been included in the AAO's review.

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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant and his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 spouse must be established whether she resides in Mexico or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. The applicant's spouse states that there are few employment opportunities for her in Mexico, her children would be deprived of a U.S. education and it would be difficult for her family to reside in Mexico after enjoying the rights and privileges of U.S. citizens. *Applicant's Spouse's Statement*, at 2, dated November 24, 1999. The record includes country conditions information on Mexico which generally reflects a lower standard of living than in the United States, a problem-plagued educational system and danger to the public health resulting from poor air quality.

The applicant's spouse was evaluated by a psychologist who states:

All of her family lives in the United States. Her mother, 7 siblings, 15 nieces/nephews, and over 25-30 cousins all have a good relationship with [the applicant's spouse]...She shared that both boys are doing very well academically, and she fears any change will disrupt their progress...she has no family in Mexico that she communicates with...she cannot leave her mother, as she is dependent upon her to translate for her and transport her places.

Psychological Evaluation, at 2-3, dated June 20, 2005.

Counsel states that taking the applicant's children to Mexico would be too traumatic, they speak very little Spanish, the children will be "undocumented aliens" in Mexico and they will not receive an education equal to what they may obtain in the United States, and the children are completely integrated into their American lifestyles. *Counsel's I-601 Brief*, at 13, dated March 28, 2006. The record includes numerous awards for the applicant's children which reflect their integration and success in America. The record reflects that the applicant's children are 13 and 9 years old. The AAO notes, however, that the applicant's children are not qualifying relatives for the purposes of this proceeding and the record does not include evidence reflecting that the applicant's spouse would experience hardship based on the hardship that her children may experience in Mexico.

Counsel states that the applicant's spouse's employment prospects in Mexico are minimal as she has no employment history there in any field, she has a financial responsibility towards her family and she will suffer psychologically if she is not able to fulfill this responsibility. *Id.* at 18-19. As previously mentioned, the record includes country conditions information which indicate only a lower standard of living than in the United States.

Based on the record, the applicant has provided insufficient evidence that his spouse would suffer extreme hardship as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that the applicant provides financial and emotional support for the family, the family would live substandard lives without him, the family is very close to the applicant, they have bought a home for the family, the applicant has no prospect of employment in Mexico, and separation would cause great grief and emotional stress. *Applicant's Spouse's 1999 Statement*, at 1-2.

The applicant's spouse states:

It would be very difficult for me to live without him...we have been together for over 16 years...we have lived the births of our two sons, bought homes, had businesses and shared the illnesses of our loved ones...Without my husband, I do not anticipate being able to provide for these children in the future...[The applicant] has always provided for us...Our mortgage payment is \$1,222,40...we have to pay the mortgage insurance, property taxes and utilities...I will not be able to financially pay the mortgage...If I stay, I will not be able to continue working because I feel that emotionally I will be unable to function in a normal way...It takes two people to raise children...[The applicant] is the backbone of his family

Applicant's Spouse's 2006 Statement, at 3, 5, 7, dated February 13, 2006.

The psychologist who evaluated the applicant's spouse states:

[The applicant's spouse] shared that her children need their father...she would have to face the reality of being a single mother with 2 children to support...It is felt that if [the applicant] is not allowed to remain in the United States, this would create great levels of stress and anxiety in [the applicant's spouse], a person who is already experiencing significant levels of depression and anxiety...She would find herself without the support (economical, emotional and spiritual) of her husband, who has been her companion since the age of 22...In her condition, she would not be capable of supporting herself and the children.

Psychological Evaluation, at 3.

The psychologist also finds that:

The current severity of [the applicant's spouse's] emotional state...would surely be exacerbated by the inability to be with her husband...If [the applicant] is forced to permanently separate from her husband, her depression and anxiety levels may increase severely enough that they would affect her work environment, social environment and personal life much more than [they do] currently. As a result, she may need psychiatric intervention.

Id. at 8.

The psychologist states that individuals who externalize their emotions generally do so by acting out and/or with aggressive behaviors, and the applicant's spouse is responding to her stressors in this manner. *Id.* The record includes the results of the applicant's spouse's psychological tests, which place her in the "severe range" of anxiety and depression, and his finding that suicide risk should not be overlooked in patients with this level of depression. *Id.* at 5-6.

Counsel states that the applicant's contribution to the boys' welfare is valuable beyond measure to the applicant, it would be a hardship on the boys to lose the applicant, and the applicant's spouse would experience emotional hardship witnessing what happens to the boys as their needs grow. *Counsel's I-601 Brief*, at 12, 14. The applicant's spouse states that the applicant is a great role model for their sons, the older son needs a solid male figure to be a productive member of society, the younger child needs the nurture of his father, and the thought of their sons not having their father is overwhelming to her. *Applicant's Spouse's 2006 Statement*, at 4.

Based on the record, the AAO finds the applicant has established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a 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 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.