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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JAN 07 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 PETITIONER:

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, 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 Director, California Service Center, 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 has resided in the United States since 1990. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to seeking admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative filed by her U.S. Citizen daughter. 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 and children.

The service center 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 Service Center Director* dated June 28, 2006.

On appeal, the applicant asserts that her husband would suffer extreme hardship if she had to depart the United States because she is the mother of his children and they are partners in providing for their children and in doing work for their community. *See Motion to reopen I-485 Application/ Statement in Support of Appeal of I-601 Denial* at 2. The applicant states that she is an “invaluable partner” in the work her husband does as a teacher and co-pastor of their church, and his work for the church would suffer if she were removed from the United States and he had to raise their four children on his own. *Id.* The applicant further asserts that the additional pressures and stressors created by being left to raise their family on his own could lead to psychological problems and psychosomatic illnesses. *Id.* The applicant additionally asserts that her husband would be unable to find employment if he relocated to Mexico due to his age, and their U.S. Citizen children would have to leave school and find themselves “at the lower rungs of economic society” if they departed and later returned to the United States due to limited education and English language skills. *Statement in Support of Appeal* at 3. In support of the waiver application and appeal the applicant submitted an article on the causes and effects of stress, a statement in support of the appeal signed by the applicant’s husband, a letter from the church where the applicant’s husband is a teacher and co-pastor, a letter from the applicant’s son’s employer, letters from the applicant’s employer and her husband’s employer, letters from the applicant and her husband, and birth certificates and school records for the applicant’s children. 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 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 *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-five year-old native and citizen of Mexico who has resided in the United States since March 2005, when she entered as a visitor for pleasure. On August 16, 1993, she attempted to enter the United States by presenting a fraudulent

border crossing card and was found to be inadmissible under section 212(a)(6)(C)(i) of the Act and voluntarily returned to Mexico. The applicant's husband is a forty-five year-old native and citizen of Mexico and Lawful Permanent Resident. The applicant and her husband and children reside in Kansas City, Kansas.

The applicant asserts that her husband would suffer extreme emotional and financial hardship if he remained in the United States without her or if he relocated to Mexico. The applicant states that being separated from the applicant and having to raise their children on his own would result in emotional hardship, and further states that he "will necessarily have additional pressure and stressors that could lead to psychological problems." *Statement in Support of Appeal* at 2. The AAO notes that no documentation was submitted concerning the applicant's husband's mental health and the potential effects of separation from the applicant. A copy of an article on stress was submitted, but the source and authorship of the article is not identified, and the article contains only general information on the numerous causes of stress and an overview on all the possible physical and psychological effects it can have. No specific evidence was submitted related to the applicant's husband's situation or his medical or psychological condition. 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 evidence does not establish that any emotional 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 only available 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.

The applicant further asserts that her husband would suffer financial hardship if she were removed to Mexico because the "separation would impose the double duty of breadwinner and homemaker on [REDACTED], while having to support a second and distant home for [REDACTED] and [REDACTED]. See *statement in support of I-601 Waiver Application* at 2. The AAO notes that no documentation of the applicant's income or her husband's income was submitted to support this assertion, but letters from their employers indicate that the applicant worked from February to July 2006 for an unspecified wage, while her husband earns \$7 per hour working at a restaurant. There is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal, and the AAO notes that their adult U.S. Citizen daughter, who filed the immigration petitions for the applicant and her husband, submitted an affidavit of support for the applicant and her husband. The financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha*

Wang, supra (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

There is no evidence on the record concerning potential hardship to the applicant's husband if he were to relocate to Mexico, such as information about any extended family ties in the United States, economic conditions in Mexico, or access to medical care there. Without such evidence the AAO cannot determine whether relocating to Mexico would result in hardship to the applicant's husband that would be more severe than that normally experienced as a result of deportation or exclusion.

There is no evidence on the record to establish that the applicant's husband would experience any hardship beyond the type of hardship that a family member 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 any 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 sections 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.