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U.S. Citizenship
and Immigration
Services

42

FILE: [REDACTED]

Office: CHICAGO, ILLINOIS

Date: JAN 12 2009

IN RE: Applicant: [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 APPLICANT:
[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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and the matter 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 who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a fraudulent entry document. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident spouse and United States citizen children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Field Office Director's Decision*, dated August 30, 2007.

On appeal, the applicant, through counsel, asserts that "the adjudicating officer abused his/her discretion, failed to follow legal precedent, and failed to consider evidence." *Form I-290B*, filed October 2, 2007.

The record includes, but is not limited to, counsel's brief, a statement from the applicant, various medical documents regarding the applicant's daughter's medical condition, and a psychosocial assessment on the applicant's family. 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, that:

- (i) 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.
- ♦ ♦ ♦ ♦
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that in November 1994, the applicant entered the United States by presenting a fraudulent entry document. On July 15, 1997, the applicant's lawful permanent resident husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 20, 1998, the applicant's Form I-130 was approved. On June 21, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 26, 2007, the applicant filed a Form I-601. On August 30, 2007, the Field Office Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

Counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is removed to Mexico. ██████████ diagnosed the applicant's husband with depressive disorder, post traumatic stress disorder, and alcohol dependence in sustained, full remission. *See psychosocial assessment by ██████████, LCPC, undated.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on four hours of interviews between the applicant's husband and a therapist. There was no evidence submitted establishing an ongoing relationship between the therapist and the applicant's husband. Moreover, the conclusions reached in the submitted assessment, being based on four hours of interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the therapist's findings speculative and diminishing the assessment's value to a determination of extreme hardship. The AAO notes that ██████████ diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood. *Id.* However, as noted above, hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. The applicant claims her husband "needs [her] to help him in everything." *Statement from the applicant, undated.* The AAO notes that numerous medical records were submitted establishing that the applicant's daughter suffers from absence-typical seizures; however, based on a report dated June 8, 2007, the applicant's daughter has been off medications since July 2006 and her seizures "are in clinical remission." *Electroencephalogram Report, dated June 8, 2007.* Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's daughter could not receive treatment for her seizures in Mexico or that she has to remain in the United States to receive her medical treatments. Counsel asserts that the applicant and her husband have strong family ties in the United States, in that both of their children are citizens of the United States. *See counsel's brief, page 7, dated October 31, 2007.* ██████████ states the applicant's family speaks Spanish in the home and if the applicant returns to Mexico, her daughters would join her. *See psychosocial assessment by ██████████, LCPC, supra.* The AAO notes that it has not been established that the applicant's children, who are 12 and 14 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. Counsel claims that although the applicant and her husband "maintain a modest lifestyle in the United States, the couple is dependent upon both of their incomes to make ends meet." *Counsel's Brief, supra* at 8. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the AAO notes that the applicant's husband is a native of Mexico, who spent his formative years in Mexico, he speaks Spanish, and his parents, three of his siblings, and six of the applicant's siblings reside in Mexico. *See psychosocial assessment by ██████████, LCPC, supra.* The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and with access to medical care. As a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims the applicant is the main caretaker for the children. *See counsel's brief, supra* at 7. The AAO notes that it has not been established that the applicant's husband will be unable to provide or obtain adequate care for his children in the applicant's absence or that this particular hardship is atypical of individuals

separated as a consequence of removal or inadmissibility. The AAO notes that the record establishes that the applicant and her husband have incurred various financial responsibilities. However, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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)(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.