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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Hi

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

JAN 15 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).

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. The record indicates that at her I-485 interview on July 20, 2004, the applicant provided sworn testimony that she had entered the United States in 1992 using a passport and visa belonging to another individual. The applicant was thus 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 U.S. citizen spouse and children.¹

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 22, 2005.

In support of the appeal, the applicant submits a statement from her U.S. citizen spouse, dated March 22, 2005. The entire record was reviewed and considered in rendering this decision.

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 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 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...

¹ The record establishes that the applicant and her spouse have four U.S. citizen children-- one born in 1993, one born in 1996, and twins, born in 2003.

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 list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In support of the waiver, the applicant’s U.S. citizen spouse asserts that he will experience extreme hardship were the applicant removed from the United States, as he needs the applicant to remain in the United States to assist with the care of their four U.S. citizen children. As the applicant’s spouse states,

We have raised four children together. The oldest [REDACTED] is 11 years old. The middle child, [REDACTED] is 8. The twins, [REDACTED] and [REDACTED] are 1 ½, and are walking like crazy now.

Our hands are full. I make just enough money to support them. [REDACTED] [the applicant's spouse] doesn't work. She takes care of them. With our car payments and rent, we just make enough money to make ends meet. If [REDACTED] leaves, there are no family members to take care of the children. I'll have to pay someone and I can't afford it (and how or why would I live without the love of my life?)....

I know I'm not supposed to talk about hardship to the children, but hardship to them is hardship to me. After all, they are my flesh and blood. And frankly speaking, I don't know what I'm going to do (repeat, what I'm going to do) to calm these two young ones down. They are both having problems with asthma, and their mother know just how to calm them down enough that their conditions don't erupt....

Declaration of [REDACTED], dated October 12, 2004.

In support of the appeal, the applicant's U.S. citizen spouse further elaborates on the hardships he would face were the applicant removed from the United States. As he asserts,

[the applicant's spouse] am suffering emotional and psychological hardship due to the possible separation and denial of my wife's [the applicant's] admission. I am extremely concerned with the well being of my children, I fear that the separation and deportation of their mother would cause them extreme psychological hardship.

These are significant hardships that would accrue to me and the children, if My spouse were deported. The family would be faced with the loss of my spouse's maternal homemaking role which is the family main source of moral support.....

Statement in Support of Appeal, dated March 22, 2005.

Based on the above statements and Ninth Circuit law with respect to separation of family, the AAO concludes that the applicant's U.S. citizen spouse would encounter extreme hardship were the applicant to relocate abroad while he remains in the United States. Due to the demands placed upon the family by four young children, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner, while ensuring the continued financial viability of the household, without the complete emotional, physical and financial support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the monitoring and supervision the children require while the applicant works outside the home, a costly proposition for the applicant's spouse.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule were the applicant removed, as the applicant would no longer be residing in the United States and assisting in the care of the children. Any alternate employment position would pay less as he would be working fewer hours. The applicant's spouse would face hardship beyond that normally expected of one facing the removal of a spouse. As such, were the applicant removed, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's U.S. citizen spouse is unable to relocate to Mexico, his native country, to accompany the applicant were she removed.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocated abroad, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if he were to accompany the applicant abroad were she removed. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.