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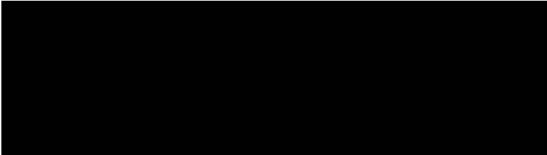


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HARLINGEN, TX

Date: JUL 09 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 APPLICANT:

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 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, Harlingen, Texas. The matter 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 under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 with her husband and children in the United States.

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. (*Amended*) *Decision of the District Director*, dated March 2, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on August 10, 1992, in Mexico; copies of the birth certificates of the couple's two U.S. citizen children; a letter from [REDACTED] a letter from the applicant; a letter from the couple's daughter; a copy of [REDACTED] naturalization certificate; copies of tax documents; letters from the children's school confirming their enrollment; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides:

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

The record shows that on September 26, 1993, the applicant attempted to enter the United States in Hidalgo, Texas, using a birth registration card that did not belong to her. The applicant was denied

entry and returned to Mexico. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through fraud. Although the applicant states she does not understand why her application was denied “since [she] came to the USA Legal[ly] with [her] VISA and Pass[port],” *Letter from* [REDACTED], dated March 29, 2007, the record indicates that the applicant was issued a Border Crossing Card, on November 18, 1994, more than a year after her attempted fraudulent entry into the United States in September 1993. The applicant’s subsequent lawful entry does not in any way nullify her previous attempt to enter the United States using another individual’s birth registration card.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, the applicant states that her husband “was kidnapped for five months last year since July 10, 2004 to December 9, 2004.” She states her husband is very scared and does not want her to return to Mexico “because he is afraid that something else would happen to him and we are not going to be here.” In addition, the applicant states her husband works in South Carolina and that it takes him three to four months to return home. She states she is “in charge of everything,” including caring for their two children. *Letter from* [REDACTED] dated March 23, 2005.

states he was “held captive.” [REDACTED] contends he does not want to return to Mexico “because of the danger we have already been through [and] are still in much dang[er] of being captured again.” *Letter from* [REDACTED] dated March 22, 2005.

The couple’s daughter, who is currently fifteen years old, states that her father is hardly ever home because he works and has to travel all the time. She states that “there is too much violence in Mexico for us to move over there.” *Letter from* [REDACTED], dated March 5, 2006.

Upon a complete review of the record evidence, the AAO finds that there is insufficient evidence to show that the applicant's husband will experience extreme hardship if the applicant is prohibited from remaining in the United States.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of his wife's waiver application and is sympathetic to the family's circumstances. However, there is insufficient evidence in the record to show that [REDACTED] would suffer extreme hardship if he returned to Mexico to live with his wife. Significantly, [REDACTED] letter exclusively addresses his kidnapping as the reason he does not want to return to Mexico, where he was born and where the couple was married. However, there are no details regarding his kidnapping, including whether he was held captive in the United States or in Mexico, or the circumstances surrounding his capture and his release. In addition, [REDACTED] does not elaborate on why he believes he or his family is in "much dang[er] of being captured again." *Letter from [REDACTED] supra.* Without more detailed information, the AAO is not in the position to conclude that [REDACTED] would suffer extreme hardship if were to return to Mexico with his wife to avoid the hardship of separation.

In addition, the record evidence does not show that [REDACTED] would suffer extreme hardship if he remained in the United States without his wife. There is no medical or psychological evidence in the record suggesting [REDACTED] requires his wife's assistance in any way due to his kidnapping. With respect to [REDACTED] traveling for several months at a time for work, the record shows Mr. [REDACTED] works in construction and has been self-employed as a rancher. *2003 U.S. Individual Income Tax Return (Form 1040); Biographic Information (Form G-325A).* It is unclear why [REDACTED] must work in South Carolina when his family lives in Texas and there is no allegation he is unable to secure employment closer to his family. There is also no information addressing why the family could not move to South Carolina to be closer to [REDACTED] work. Furthermore, although the applicant has been the primary caretaker of the couple's two children, the applicant has not made a financial hardship claim and, aside from tax documents, there are no financial documents in the record. In any event, even assuming [REDACTED] would suffer some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

If [REDACTED] remains in the United States without his wife, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Perez v. INS, supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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 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) 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.