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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CA

Date:

MAR 03 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 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 entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. 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.

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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 24, 2006.

Counsel filed an appeal without a brief or additional evidence. On appeal, counsel contends that considerable economic, medical and physical hardships to the applicant's spouse have been demonstrated in this case. Counsel also asserts that the applicant's spouse is disabled, in remission from colon cancer and suffers from severe degenerative spine problems and that the applicant is his sole companion and source of support in dealing with these serious issues. *Form I-290B Notice of Appeals*, filed on June 26, 2006.

The record includes, but is not limited to, a statement from the applicant's spouse submitted with Form I-601 waiver application and a report from [REDACTED] Diagnostic Imaging Department, John F. Kennedy Memorial Hospital, dated December 14, 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 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 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.

The record reflects that the applicant entered the United States on December 11, 1992 by using a fraudulent Form I-551 Resident Alien Card. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative, in this case, the applicant's spouse. The only relevant hardship in the present case is hardship suffered by the applicant's husband.

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 provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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 addition, the Ninth Circuit Court of Appeals case in *Salcido-Salcido v. INS*, 138 F. 3d 1292, 1293 (9th Cir. 1998) held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Accordingly, the separation of family will be accorded appropriate weight in this proceeding.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant submitted a declaration from her spouse with her Form I-601 waiver application. In this declaration, the applicant's spouse states that he cannot stress how profoundly it would affect him if the applicant were to have to return to Mexico; that they love each other very much, and that if she leaves, he does not know how to survive without her. The applicant's spouse states that the applicant has been his strength during the past six years; in 2000 he was diagnosed with and treated for colon cancer, and now has severe degenerative changes to his lumbosacral spine. The applicant's spouse asserts that, in addition to the emotional hardship that would be created by the applicant's removal, he would suffer extreme financial hardship. He states that he is disabled, and receives social security benefits; that although he is able to maintain a household in the United States, it would be impossible for him to maintain a second household in Mexico; that traveling to Mexico would be expensive; and that he does not know how he would travel with his disability.

Economic hardship faced by the applicant's spouse if he resides in the United States is relevant in determining extreme hardship. However, the applicant's spouse states in his declaration that he is able to maintain his and the applicant's household in the United States and the record does not contain documentation, e.g., country conditions information on the Mexican economy, showing that the applicant would be unable to find a job and earn sufficient income to support herself outside the United States.

The record includes a report from [REDACTED] at John F. Kennedy Memorial Hospital. Based on the diagnostic imaging conducted on December 14, 2005, the radiologist concludes that the applicant's spouse has extensive degenerative changes to the lumbosacral spine, worse at L4-5. [REDACTED] suggests an MRI of the lumbosacral spine if symptoms persist. However, [REDACTED] fails to address the impact of the spouse's health condition on his ability to work or perform daily activities. Further, the record does not contain any documentation showing whether the applicant's spouse's symptoms persist, whether an MRI of the lumbosacral spine was taken and its result. Neither does the record document that the applicant's spouse has been diagnosed and treated for cancer. Simply 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 AAO is mindful of and sensitive to the applicant's and her spouse's concerns about maintaining their family and the hardship the applicant's spouse will endure if separated. However, it does not find the record to contain evidence that distinguishes the applicant's spouse's situation, if he remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not

conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). Having carefully considered the hardship factors, both individually and in the aggregate, the AAO concludes that the record in this case does not demonstrate extreme hardship to the applicant’s spouse in the event that he remains in the United States following the applicant’s removal.

With regard to the hardship that would be experienced by the applicant’s spouse if he relocated to Mexico with the applicant, the AAO notes that the issue of relocation and its impact on the applicant’s spouse is not addressed in the record. Accordingly, the AAO is unable to find that the applicant’s spouse would suffer extreme hardship if he relocated outside the United States with the applicant.

In the final analysis, the AAO finds that the applicant has failed to establish that her spouse would experience hardships over and above these normally created by the removal of a spouse so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(i) of the Act, 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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.