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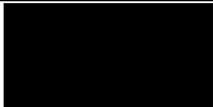


U.S. Citizenship
and Immigration
Services



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FILE:



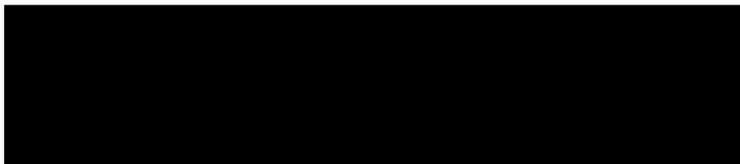
Office: LOS ANGELES, CALIFORNIA

Date: **MAR 03 2009**

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IN RE:

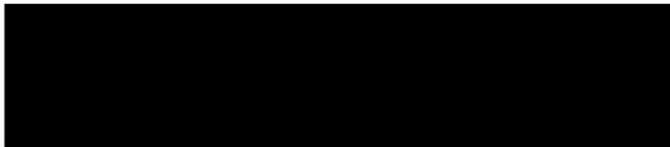
Applicant:



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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that even though counsel filed a single appeal for the denials of the Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), the AAO will only adjudicate the applicant's appeal on the Form I-601 denial. The Adjudicator's Field Manual offers guidance on adjudicating Forms I-601 and Forms I-212 that are filed together. *See* Adj. Field Manual 43.2.

43.2 Adjudication Processes.

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

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 Resident Alien Card (Form I-551) in someone else's name. The record indicates that the applicant is married to a naturalized United States citizen 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 United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Form I-601 accordingly. *District Director's Decision*, dated April 19, 2007.

On appeal, the applicant, through counsel, asserts that "the Service erred in holding that [the applicant] failed to demonstrate extreme hardship to her United States Citizen spouse." *Appeal Brief*, page 2, dated December 26, 2007.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, and the applicant's marriage certificate. 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 on November 27, 1995, the applicant entered the United States by presenting a Form I-551 in someone else's name. On November 30, 1995, an immigration judge ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported from the United States. According to the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485), the applicant entered the United States in December 1995. On November 10, 1999, the applicant's naturalized United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 8, 2000, the applicant's Form I-130 was approved. On July 9, 2001, the applicant filed a Form I-485. On November 15, 2002, the applicant filed a Form I-601. On March 24, 2005, the applicant filed a Form I-212. On April 19, 2007, the District Director denied the applicant's Form I-212 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative. On November 30, 2007, after the Form I-212 and Form I-601 decisions were returned to the Service, the District Director resent the denial letters to the applicant.

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. Counsel states that if the applicant "is forced to return to her native Mexico, her family will undoubtedly be separated and critical financial support will be lost." *Appeal Brief, supra* at 2. 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 even though the applicant's husband is a native of El Salvador, he speaks Spanish. Counsel contends that since the applicant's spouse is not a citizen of Mexico, he would not be permitted to go to Mexico; however, the AAO notes that no evidence was submitted establishing that Mexican law would not allow for legal residency under such circumstances. The applicant's husband claims that the applicant would not be safe in Mexico. *Affidavit of [REDACTED]* dated November 7, 2002. As noted above, hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. 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 in close proximity to his family. Counsel states the applicant's husband "would not accompany [the applicant] to Mexico if she is forced to return there." *Appeal Brief, supra* at 3. As a United States citizen, 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 states the applicant's husband "relies on [the applicant], the primary caretaker of the children, to care for their children while he at work." *Id.* at 4. 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. Additionally, the AAO notes that many of the applicant's and her husband's family reside in the United States. *See Affidavit of [REDACTED] supra*. Counsel claims the applicant's husband "has come to rely heavily on [the applicant] for both emotional and financial support." *Appeal Brief, supra* at 3. The AAO notes that 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.

Additionally, the AAO finds that since the applicant is ineligible for a waiver under section 212(i) of the Act, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the District Director.

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.