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U.S. Citizenship
and Immigration
Services

42

FILE: [REDACTED]

Office: LOS ANGELES

Date: **MAR 09 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 and reside with her permanent resident husband and U.S. citizen son.

The district director concluded that the applicant 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 November 2, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, at 2, dated November 26, 2006.

The record contains a brief from counsel; a statement from the applicant's husband; a copy of the applicant's husband's permanent resident card; a copy of the birth certificate of the applicant's son; a psychological evaluation of the applicant's husband; a copy of the applicant's marriage certificate; statements from the applicant's brother, the applicant's grandmother, the applicant's cousin, the applicant's aunt, the applicant's uncle, and a friend of the applicant's husband; a copy of a lease for the applicant and her husband; documents in connection with the applicant's education; copies of photographs of the applicant and her family; a copy of the applicant's birth certificate; and a copy of a fraudulent Honduran birth certificate the applicant previously submitted to U.S. Citizenship and Immigration Services (USCIS). 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 submitted a fraudulent Honduran birth certificate to USCIS as part of an application for Temporary Protected Status to show that she was a Honduran citizen, when she was in fact born in Mexico and is a Mexican citizen. Accordingly, the applicant attempted to gain a benefit under the Act by fraud and misrepresenting a material fact (her true nationality.) Accordingly, she was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

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 the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; 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).

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 pursuant to section 212(i) of 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.

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).

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel* at 2.

The applicant's husband stated that he will experience hardship if the applicant is prohibited from remaining in the United States. *Statement from Applicant's Husband*, dated December 1, 2006. He stated that he is a national of Honduras and the applicant is a native of Mexico. *Id.* at 1. He stated that he and their eight-year-old son would go to Mexico with the applicant should she be compelled to depart, yet they would endure hardship as a result. *Id.* He indicated that Hondurans are discriminated against for employment in Mexico, thus he would have difficulty securing a job. *Id.* He explained that he currently supports the applicant and their son financially, and the applicant does not work, thus relocating to Mexico would have a significant impact on their economic situation. *Id.*

The applicant's husband noted that his entire family resides in the United States, and none remain in Honduras. *Id.* at 1-2. He explained that he, the applicant, and their son could go to Honduras, yet they would face similar problems such as employment challenges. *Id.* at 2. He stated that he wishes to continue his goal of working and supporting his family in the United States. *Id.*

The applicant's husband stated that he cannot separate his son from the applicant or his family will experience emotional hardship. *Id.* He noted that his son would be compelled to forego benefits of residing in the United States, such as educational opportunities, which would in turn cause the applicant's husband mental hardship. *Id.* at 4.

The applicant's husband indicated that he is experiencing psychological hardship due to the prospect of the denial of the present waiver application. *Id.* at 2. He noted that an evaluator recommended that he seek counseling and a medical evaluation. *Id.* He expressed that he may not have access to required medical care should he relocate to Mexico. *Id.* at 3.

The applicant provided a psychological evaluation for her husband from [REDACTED], a marriage and family therapist. Ms. [REDACTED] stated that she examined the applicant's husband on August 13, 2006 for the purpose of evaluating him for the present waiver application. *Report from [REDACTED]* dated August 15, 2006. She indicated that the applicant's husband reported emotional difficulty relating to the possibility of separation from the applicant and the need to support two households. *Id.* at 1. She described symptoms reported by the applicant's husband, including lack of concentration, loss of ten pounds, and depression. *Id.* at 2. She indicated that he exhibits symptoms of Major Depressive Disorder and Generalized Anxiety Disorder. *Id.* at 3. She recommended that the applicant's husband undergo a medical evaluation to determine if antidepressant medication is required to decrease his symptoms, and psychological treatment to develop better coping skills. *Id.* at 4.

The applicant submitted statements from friends and family members who attest to the closeness of the applicant, her husband, and their son, as well as the general good character of the applicant and her husband.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The applicant's husband contends that he will endure significant emotional hardship if the applicant is compelled to depart the United States. The AAO appreciates the challenges that the applicant's husband will face should the present waiver application be denied, yet the applicant has not shown that he will suffer emotional consequences that are greater than those commonly experiencing by families who are separated or relocate due to inadmissibility.

Should the applicant's husband remain in the United States and the applicant depart, he would endure family separation. Should he relocate to Mexico with the applicant he would be separated from friends and family members in the United States. Yet, separation from relatives is a common result of inadmissibility and does not, by itself, constitute extreme hardship. U.S. 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, *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. 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. *Hassan v. INS*, *supra*, 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 applicant provided a psychological evaluation for her husband that was generated after a single session. While the AAO values the opinion of a mental health professional, the report from [REDACTED] does not represent ongoing treatment or a continuing relationship between the applicant's husband and a therapist or doctor. The applicant has not asserted or shown that her husband required or received follow-up care. Thus, the report does not show that the applicant's husband is experiencing emotional hardship that is greater than or different from that which is ordinarily experienced by the spouses of those who are deemed inadmissible.

The applicant's husband references hardships he would endure should he relocate to Mexico or Honduras. The applicant's husband emphasized that he is the sole income earner for his family. Yet, while he claims he would have difficulty securing employment in Mexico or Honduras, the applicant has not submitted any evidence to support this assertion. While the applicant's husband may earn less income in Mexico or Honduras, the applicant has not shown that they would be unable to meet their needs. While the applicant's husband indicated that the applicant does not work, the record contains no evidence that the applicant is unable to enter the workforce to help meet the needs of their family. Accordingly, the applicant has not provided ample evidence to show that her husband would face financial hardship that rises to the level of extreme hardship.

The applicant's husband suggested that his son would experience hardship if they relocate to Mexico, as his son would lose the benefits of residence in the United States such as educational opportunities. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO has given consideration to the hardship that would be experienced by the applicant's son should the family choose to relocate him to Mexico. However, the applicant has not shown that her son's hardship would elevate her husband's challenges to extreme hardship.

It is noted that the applicant's husband is a native and citizen of Honduras. While he is not a native or citizen of Mexico, the record suggest that he speaks and writes Spanish, and that he is familiar with Central American culture. Thus, the record supports that he can adjust to residence in Mexico.

The applicant's husband is not required to depart the United States if the present waiver application is denied. The applicant has not shown that her husband would face extreme hardship should he remain without her. While it is understood that the applicant's husband would endure emotional hardship if separated from the applicant and their son, as discussed above, the applicant has not

sufficiently distinguished this hardship to show by a preponderance of the evidence that it constitutes extreme hardship.

All elements of hardship to the applicant's husband have been considered individually and in the aggregate. Based on the foregoing, the applicant has not provided sufficient documentation to show that her husband will experience extreme hardship, should he remain in the United States or depart with the applicant to maintain family unity. 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(i)(1) 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.