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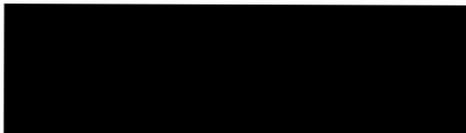
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: CHICAGO, ILLINOIS

Date: MAY 07 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, 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, Chicago, Illinois, 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 for fraud or willful misrepresentation pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is the spouse of a U.S. lawful permanent resident, [REDACTED], and the mother of five children, two of whom are U.S. citizens. She seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The district director found that, based on the evidence of record, the applicant had failed to establish that her inadmissibility would result in extreme hardship to a qualifying relative. He denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the District Director*, dated November 15, 2005.

On appeal, counsel asserts that the district director based his denial of the Form I-601 upon an improper evaluation of the effects of the applicant's inadmissibility upon [REDACTED]. *Counsel's Brief on Appeal*.

The record reflects that on September 19, 1991, the applicant attempted to enter the United States by presenting a counterfeit Form I-688. On September 25, 1991, pursuant to her guilty plea, the applicant was convicted before a U.S. Magistrate for knowing possession of a false identification document, with intent that it be used to defraud the United States, in violation of 18 U.S.C. § 1028(a)(4).¹ The applicant returned to Mexico and later entered the United States, without inspection, in or around December 1991.

The district director's decision indicates that he determined that the applicant was not only inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States with a fraudulent Form I-688, but also because on her Form I-485, Application to Register Permanent Resident or Adjust Status, and at the time of her first adjustment of status interview, the applicant claimed that she had never been arrested, charged, or fined for breaking any law or ordinance except traffic violations.

On appeal, counsel contends that the applicant did not commit any willful misrepresentation during the Form I-485 adjustment process. While the AAO notes counsel's claim, it does not find it necessary to consider this aspect of the applicant's case as the applicant's misrepresentation at the

¹ The record of the applicant's conviction, for violating 18 U.S.C. §§ 1028(a)(4) and (b)(3), erroneously indicates that these sections include use of a false document. The U.S.C. Annotated reveals that, at the time of the conviction, section (a)(4) targeted only "knowing[] possess[ion of] an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States," and section (b)(3) only specified the punishments for convictions under sections 1028(a)(1)-(a)(6).

port of entry in 1991, by itself, renders her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

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 extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant or her children is not directly relevant to a consideration of extreme hardship, except to the extent that it affects the qualifying relative. 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).

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 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. The BIA has held:

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)].

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 removed.

To demonstrate extreme hardship in the present case, the applicant must establish that [REDACTED] would suffer extreme hardship whether he relocates with the applicant to Mexico or remains in the United States without her. This is because [REDACTED] is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that he relocates to Mexico. The AAO notes, however, that neither counsel nor the applicant address the impact of relocation on [REDACTED]. Therefore, the AAO is unable to find that he would experience extreme hardship if he moved to Mexico with the applicant.

The second part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event he remains in the United States.

In her May 2003 affidavit filed with the Form I-601, the applicant indicated that she and her husband had owned their home, in East Moline, Illinois since 1994, and were living there with their five children, all of whom were enrolled in the local schools where they were performing well. The applicant further attested that she was an active member of a local church where she often volunteers; that she brings her children to church events; that one of her children was applying to college; and that she and her husband were then working as factory workers at IBP, Inc., a division of Tyson Foods, Inc., each earning \$10.30 per hour. The applicant further stated that she and her family are very close; that her children would suffer extreme emotional hardship if they were separated from her; and that her family depends upon her economically and emotionally. *Applicant's Affidavit of May 29, 2003.*

On appeal, the applicant provides the following information about her family's circumstances and the impact of her inadmissibility. She has four daughters and one son, all of whom are living at home with the applicant and her husband. The three oldest children do not have a lawful immigration status in the United States and are, therefore, unable to attend college because they cannot qualify for scholarships. The two younger children are U.S. citizens. [REDACTED] is earning

about \$22,000 per year. Until the denial of her application for work authorization, the applicant also had been earning about \$22,000 per year at Tyson Fresh Meats, Inc. The applicant asserts that, without her income, her family of seven is living below the poverty line. Listing the family's approximate weekly and monthly expenses, she estimates that they total "close to \$1900 every month." As only [REDACTED] is now working, the family cannot afford its living expenses and may have to resort to government assistance. The applicant asserts that denial of her I-601 will cause "extreme suffering" for her husband and children. She states that the family lived comfortably while she was employed but, without her income, would continue to live "well-below the national poverty level, by \$7,000." *Applicant's Affidavit of December 2, 2005.*

[REDACTED] affidavit of December 2005 repeats the applicant's information about their family, its income and expenses, the reason the applicant is no longer employed, and the financial impact of the loss of her income. [REDACTED] indicates that the family is still living together in their house in East Moline, and echoes the applicant's assertion that his income is insufficient to meet the family's basic needs. He states that his older children are unemployable in the United States because of their unlawful status and that he works for his wife's former employer, Tyson's Foods, Inc. [REDACTED] states that the applicant's absence will cause his family to suffer economically and will have an adverse impact on his non-citizen daughters. He adds that the applicant is "the most important part of the family, working full-time and maintaining the children's schedules," as well as handling the grocery shopping and cooking, and that he and the children have a wonderful relationship with her. *Affidavit of December 2, 2005.*

The record's copies of federal income tax returns and employment letters corroborate the information provided by the applicant and [REDACTED] about their employment and income. Copies of real estate property tax receipts corroborate that the [REDACTED] are living in their own home in East Moline, Illinois.

While the AAO acknowledges the applicant's and [REDACTED]'s statements regarding the economic hardship that is being and would be suffered by their family as a result of the loss of the applicant's income, it does not find their claims to be supported by the record. The record does not contain documentary evidence of the \$1,900 in monthly expenses claimed by the applicant. Neither does it offer published country conditions reports that demonstrate that the applicant would be unable to obtain employment upon her return to Mexico and assist her family financially from outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 also notes the applicant's claim that her family depends upon her emotionally and acknowledges that [REDACTED] and the applicant's children will suffer emotional hardship as a result of separation. However, the record again contains no documentary evidence, e.g., an evaluation from a licensed mental health practitioner, that establishes that the emotional impact of separation on [REDACTED] would be greater than that experienced by other individuals whose spouses are removed from the United States. *Id.*

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme* hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(a)(9)(B)(v) and 212 (i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The AAO further notes the claims of hardship made on behalf of the applicant’s children. However, as previously discussed, the applicant’s children are not qualifying relatives for the purposes of this proceeding and the record fails to indicate how [REDACTED] the only qualifying relative, would be affected by the hardships they would experience. Accordingly, the AAO finds that the applicant has failed to establish that [REDACTED] would suffer extreme hardship if he remained in the United States without her.

As the evidence of record does not demonstrate that [REDACTED] would experience extreme hardship as a result of the applicant’s inadmissibility, the applicant has not satisfied the requirement in section 212(i) of the Act. In that the applicant is 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 sections 212(a)(9)(B)(v) and 212(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.