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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: LOS ANGELES Date: MAY 13 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:

[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, 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 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 procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the wife of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. 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 spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated January 17, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant had not established extreme hardship to her U.S. citizen husband if she is removed from the United States. Specifically, counsel claims that the applicant's husband would suffer extreme emotional and financial hardship if the applicant were removed and he remained in the United States, or if he relocated to Mexico with the applicant. *Brief in Support of Appeal* at 6-9. Counsel further states that the applicant was never clearly informed by USCIS of why she was found to have committed misrepresentation or fraud. *Brief* at 2. In support of the waiver application and appeal, counsel submitted the following documentation: declarations from the applicant and her husband, employment letters from the applicant and her husband, joint income tax returns for 2002 to 2004, a copy of a lease, bank statements and other financial documents, a letter from the applicant's church, affidavits from friends and relatives in support of the waiver application, letters concerning the applicant's pregnancy at the time the appeal was filed and a prior pregnancy that ended in miscarriage, copies of death certificates of the applicant's parents, proof of U.S. citizenship of the applicant's mother-in-law and sister-in-law and documentation concerning the disappearance of her husband's father, and copies of family photographs. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

Counsel states that the applicant was informed during her interview for adjustment of status that she needed to file an application for a waiver of inadmissibility because she had committed fraud or misrepresentation at the El Paso, Texas Port of Entry on July 22, 1998, but she was never clearly informed of what constituted the misrepresentation or fraud. *Brief* at 2. In a sworn statement dated February 9, 2005, the applicant stated that when she last entered the United States, she had a husband and family in Fontana, California and that she was coming to the United States as a tourist. *See Sworn Statement of* [REDACTED]. Since the record did not establish when and where the applicant married her first husband and when he arrived in the United States the applicant was asked to submit a copy of her certificate of marriage to [REDACTED] and any documentation or information related to [REDACTED] presence in the United States on or before July 22, 1998 to establish the applicant's intent when she entered the United States on July 22, 1998 and re-entered with a border crossing card later that year. In response to this request, the applicant submitted a copy of her marriage certificate and an affidavit explaining her intent when she entered the United States in 1998. The evidence indicates that the applicant married her former husband in April 1998 in Mexico, and that she traveled to the United States in July 1998 to visit his mother, who resided in the United States and was sick. *See Affidavit of* [REDACTED] dated March 4, 2009. The applicant also submitted a letter from her former employer in Mexico stating that she had asked for vacation time in July 1998.

Counsel states that the applicant departed the United States and reentered in September 1998, but there is no evidence that the applicant ever departed the United States after she entered in July 1998. Whether the applicant remained in the United States since July 1998 or she departed and returned to the United States as a visitor in September 1998, she has remained illegally in the United States for more than ten years after stating that she had only planned to visit with her mother-in-law in July 1998 and then return to her employment in Mexico. The applicant never departed the United States after her last entry in 1998, and the AAO finds that she willfully misrepresented a material fact when she sought admission as a nonimmigrant visitor for pleasure in July 1998 and is therefore inadmissible under section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 addition, the Ninth Circuit Court of Appeals case, *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.)

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Mexico who has resided in the United States since 1998, when she was admitted as a temporary visitor for pleasure. The applicant married her husband, a thirty year-old native and citizen of the United States, on December 14, 2003. The applicant and her husband reside in Ontario, California with their son.

Counsel asserts that the applicant's husband would experience extreme hardship if he relocated to Mexico with the applicant because he has never lived in Mexico and would be separated from family members in the United States and would suffer economic hardship and "an indecent standard of living" because of poor sanitary and health conditions as well as work, educational, and medical conditions. *Brief* at 7-8. Counsel asserts that the applicant and her husband would be unable to obtain medical insurance, which the applicant's husband was in the process of obtaining in the United States at the time the appeal was filed, and would also face danger because of police corruption and violent crimes including kidnappings. *Brief* at 9. Counsel also states that working conditions are poor in Mexico and cites statistics from the National Minimum Wage Commission. *Brief* at 10.

Counsel submitted a 2004 U.S. State Department *Country Report on Human Rights Practices for Mexico*, which provides information on human rights violations committed by government authorities and other entities and addresses issues including corruption and disregard of the law by government authorities. The report states that Mexico in 2004 experienced growth in the economy but that income distribution was skewed, with the wealthiest 10% of the population earning 36% of the total income, and further states that the minimum wage did not provide for a decent standard of living for a worker and family. Based on the evidence on the record, it appears that the hardships to the applicant's husband if he relocated to Mexico, when considered in the aggregate, would amount to extreme hardship. The applicant's mother and sister reside in the United States, and declarations from the applicant's husband and his sister indicate that they are a close family and spend a lot of time together. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). Further, the applicant has resided in the United States his entire life and would have to leave his employment and relocate to a country with a lower standard of living and a high rate of violent crime. Although the documentation submitted by counsel contains only limited information concerning kidnappings and other violent crime in Mexico, the AAO takes note of more recent travel advisories issued by the U.S. Department of State warning U.S. citizens of the danger of traveling to certain parts of Mexico, including border regions such as the state of Chihuahua where the applicant previously resided. U.S. Department of State, Bureau of Consular Affairs, *Travel Alert – Mexico*, February 20, 2009.

Counsel additionally asserts that the applicant's husband would suffer extreme hardship if he remained in the United States because of the emotional effects of separation from the applicant. The applicant's husband states that separation from the applicant would be unimaginable and he is frightened by the thought of how separation from the applicant would affect their son. *See Declaration of* [redacted] dated December 19, 2005 at 1. He states that he lost his father when he was ten years old and does not want their son to grow up without one of his parents, as he did, and does not want him to miss out on educational opportunities in the United States. *Id.* At 2. He states that he loves and needs his wife and wants to have more children with her and further states: "I need for my son [redacted] to have his mother and I need to be there for him. I just want us to be together." *Id.* at 5.

Counsel asserts that the applicant's husband would suffer extreme emotional hardship if the applicant were removed, but no information was submitted concerning the applicant's husband's mental health or the potential effects of separation from the applicant. The evidence on the record is insufficient to establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Counsel asserts that the applicant's husband would also suffer financial hardship if the applicant were removed because they can only pay their expenses with their combined incomes. *Brief* at 8-9. In support of these assertions counsel submitted a copy of a joint income tax return, a letter from the applicant's employer and one from her husband's employer, a copy of their lease, documentation of their automobile loan, and bank statements. The documentation submitted indicates that their monthly rent in 2005 was \$1125 and their car payment was \$400 per month until May 18, 2008. The income reported for 2004, the most recent income tax return on the record, was \$22,679, with the applicant and her husband each earning about \$11,000. Based on the evidence on the record, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial hardship the applicant's husband would experience if he remained in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.