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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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[REDACTED]

FILE:

[REDACTED]

Office: DENVER, CO

Date: **NOV 06 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Khew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado 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 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), for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident and her two children are U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 2, dated June 7, 2006.

On appeal, counsel asserts that the applicant's spouse and two children would suffer extreme hardship. *Brief in Support of Appeal*, at 4, dated July 8, 2006.¹

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, educational records for the applicant's children, a psychological evaluation of the applicant's spouse, country conditions information, and statements from the applicant's family and friends. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented a lawful permanent resident card that did not belong to her when she attempted to procure admission to the United States on March 28, 1998. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.

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

¹ The AAO notes that counsel is attempting to appeal the Form I-212 and Form I-485 denials as well. *Brief in Support of Appeal*, at 1. Although three Form I-290Bs were filed, only one filing fee was received by U.S. Citizenship and Immigration Services. As such, the Form I-212 denial is not considered to be on appeal and the timeframe to appeal that denial has passed. The AAO also notes that it does not have jurisdiction to review an appeal of the type of Form I-485 that the applicant had filed.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or her children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship 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).

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 lawful permanent resident or United States citizen family ties to 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.*

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Mexico or in the United States, as the qualifying relative 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 analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Mexico. Counsel states that the applicant's spouse's mother, two brothers and three sisters live in Denver; he would have to remain the United States to earn a living for the applicant, his two sons, his mother and his two other children; he is legally required to pay \$321 in monthly child support and regularly sees his two other children; he has resided in the United States for 25 years; the applicant does not anticipate finding employment in Mexico and medical care, especially in rural Durango, is less than satisfactory; his family could not afford the regular medical treatment that they receive now; Mexico struggles with a myriad of issues, including human rights violations, health care, underemployment, disparity of wealth and narcotics trafficking; the applicant's older son is an honor roll student, he benefits from the "I Have a Dream" foundation, and it is very unlikely that he would receive a comparable education and be exposed to the same opportunities that he now has access to; and the applicant's children would be exposed to a lack of educational opportunities, impoverished living conditions, limited access to health care and high rates of crime and corruption. *Brief in Support of Appeal*, at 4-6. The record includes

supporting documentary evidence of many of these claims. However, the record does not establish that the applicant's spouse could not earn a living as a bricklayer in Mexico or indicate how the children's hardship would affect the applicant's spouse. The applicant states that she and her children would have to live with her parents in rural Durango Mexico as she has no where else to go, her children would have to move to a city five hours away to attend high school and they could not afford that or want them living by themselves at such a young age, and her parents' house has no running water with the nearest well being 15 minutes away. *Applicant's Statement*, at 1-2, dated July 6, 2006. The applicant's spouse states that he sees his two other children about every other week, his mother and two other children would suffer if he went to Mexico, he would leave behind a good job in the United States and he would abandon his lawful status in the United States. *Applicant's Spouse's Statement*, at 2, dated July 5, 2006. Based on the totality of the hardship factors, the AAO finds that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant and her spouse have been married for 11 years, the applicant's spouse's mother resides with them and she has several health problems, the applicant's spouse's mother depends on them and has always lived with them, and the children would return to Mexico as no one could care for them. *Brief in Support of Appeal*, at 4. The applicant states that she cares for her sons while her spouse works during the day, she works at night as they need the money she earns, and there is no one to care for their sons in her absence as her spouse's family members work. *Applicant's Statement*, at 1. The applicant's spouse states that the applicant takes care of him, his children and other extended family; he starts his construction job very early; they are a very close family and depend on each other for everything; they count on the money she makes; he has to remain in the United States to support his family; it is not an option for his children to grow up without their mother as there is no one to care for them in her absence and it is not natural to grow up without a mother; and he supports his mother and two other children. *Applicant's Spouse's Statement*, at 1. The record reflects that the applicant's spouse's mother has multiple medical issues including emphysema, carpal tunnel syndrome, high blood pressure, vertigo and osteoporosis. *Letter from [REDACTED]*, dated June 28, 2006. The record does not indicate that one of the applicant's spouse's siblings, who he states also live in Denver, could not provide a home for or care for their mother.

The applicant's spouse was evaluated by a psychologist who states that the applicant's spouse meets the criteria for Attention Deficit Hyperactivity Disorder (ADHD) and Alcohol Dependence; he has many of the traits and features of Dependent Personality Disorder, making him entirely dependent on the applicant for his well-being and emotional stability; he would rapidly deteriorate psychologically and physically to the point of complete breakdown if separated from her; he has begun to spiral out of control with his drinking; and he has an apparent lifetime of mental health struggles with ADHD, anxiety, his dependence on the applicant and his current drinking problems. *Psychological Evaluation*, at 6, 8, dated October 1, 2008. While the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview with the applicant and her spouse. Further, its conclusions appear to be based, in

large part, on the reporting of the applicant as the psychologist indicates that he found the applicant's spouse to be minimally introspective and states that the applicant's spouse "offered very little insight into his psychological functioning, his hopes, dreams, fears, etc." Accordingly, the AAO finds the conclusions reached in the evaluation to be of minimal evidentiary weight in determining extreme hardship.

Based on the record, the AAO finds that there is insufficient evidence to support a finding that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.