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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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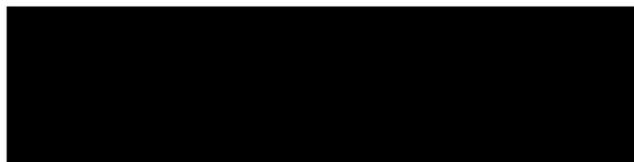
IN RE:

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting a false entry document. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130) and Petition for Alien Fiancé(e) (Form I-129F). 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 husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 13, 2006.

On appeal, the applicant, through counsel, states the District Director "reviewed this matter incorrectly." *Attachment to Form I-290B*, filed December 18, 2006.

The record includes, but is not limited to, an attachment to Form I-290B and an affidavit from the applicant's husband. 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.
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- (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...

In the present application, the record indicates that the applicant married her husband on August 7, 2004 in Mexico. In August 2004, the applicant attempted to enter the United States by presenting a fraudulent entry document, and she was returned to Mexico. On October 15, 2004, the applicant's United States husband filed a Form I-130 on behalf of the applicant. On December 22, 2004, the applicant's Form I-130 was approved. On January 10, 2005, the applicant's husband filed a Form I-129F on behalf of the applicant. On June 8, 2005, the applicant's Form I-129F was approved. On January 4, 2006, the applicant filed a Form I-601. On November 13, 2006, the District Director denied the Form I-601, finding the applicant attempted to enter the United States through misrepresentation and she failed to demonstrate extreme hardship to her United States citizen spouse.

The AAO notes that counsel does not dispute that the applicant misrepresented herself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

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 a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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.

On appeal, counsel claims that "[t]his is not just a matter of financial hardship, but one of extreme emotional hardship for [the applicant's] husband." Counsel states the applicant's husband's "parents and sister live with him in his home and he assists in their care and wellbeing." The AAO notes that other than statements from counsel and the applicant's husband, there was no documentation submitted establishing that the applicant's husband's parents and sister require his assistance in their care and wellbeing. In an affidavit dated December 13, 2006, the applicant's husband states he is "very concerned about the welfare of [his] parents if [he] cannot stay here in the United States." The AAO notes that the applicant's husband's parents and sister may experience some hardship in being separated from the applicant's husband; however, they are not qualifying relatives for a waiver under section 212(i) of the

Act. Counsel states that “[i]t would not be likely that [the applicant’s husband] would be able to secure employment in Mexico.” The AAO notes that the applicant’s husband works in construction, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico and that there are no employment opportunities for him in Mexico. Counsel states the applicant’s husband has had to postpone “his dream of having children and his desire to further his education.” The AAO notes that if the applicant’s husband joins the applicant in Mexico, then they can continue their plans to have children. Additionally, the AAO notes that it has not been established that the applicant’s husband cannot further his education in Mexico. Furthermore, the AAO notes that the applicant’s husband speaks and writes in Spanish, and it has not been established that he has no family ties in Mexico. 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, continuing to make payments on his debts, and in close proximity to his family. The AAO notes that 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. The applicant’s husband states he is working “additional hours to help support [the applicant] and [his] family here in the United States.” The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband’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 has endured 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.

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.