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**OCT 01 2009**

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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 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, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico. She 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 having procured entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), in order to return to the United States to join her U.S. lawful permanent resident husband, [REDACTED]

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant furnished an affidavit from her spouse, dated December 22, 2006. The record also contains a letter from the applicant, dated November 23, 2005, written in Spanish without a corresponding English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in these proceedings. 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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented a fraudulent document for admission to the United States at the San Ysidro, California port-of-entry in 1986. The record supports this finding, and the AAO concurs that this

misrepresentation was material. The applicant has not disputed her inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 alien herself experiences is irrelevant to section 212(i) waiver proceedings; 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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 United States 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [REDACTED] a U.S. lawful permanent resident, on March 22, 1986. The applicant's spouse is a qualifying family member for section 212(i) of the Act extreme hardship purposes. The applicant and her spouse have a 22-year-old U.S. citizen child, [REDACTED] a 18-year-old U.S. citizen child, [REDACTED] a 16-year-old Mexican citizen child [REDACTED] and a 14-year-old Mexican citizen child, [REDACTED]

The applicant's spouse asserts that due to the applicant's legal status and legal problems obtaining U.S. permanent residency, he has experienced severe anxiety and depression. He states that the stress is causing him severe psychological reactions.

The AAO has reviewed the record of proceedings and finds that it fails to reflect any type of assessment or evaluation of the applicant's mental health by a licensed mental health professional. There is no medical documentation in the record related to the applicant's diagnosis for severe depression and anxiety. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence. For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship.

The applicant's spouse asserts that the applicant is his emotional support and he needs her by his side with his children. He states that he has four children living in Mexico because they do not want to leave the applicant alone. He notes that two of his children are U.S. citizens and are missing school. He states that he would like them to be in the United States so they can study and take advantage of their nationality. He states that he wants his children to be independent and better their lives. He states that he misses his family and needs them by his side. He states that he loves his wife and children very much. He states that coming home from work each day without their presence is extremely difficult and the separation is overwhelming.

The AAO notes that the aforementioned statements, in part, address the hardships that the applicant's adult U.S. citizen children are suffering due to the applicant's inadmissibility. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of separation from the applicant and his children. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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 the familial and emotional bonds, exist. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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).

Finally, the applicant's spouse, a native and citizen of Mexico, has only addressed hardship related to his continued separation from the applicant. He and has not asserted, or submitted evidence to demonstrate, that he would suffer extreme hardship in Mexico if he relocated there. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if he relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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) of the Act, the burden of establishing that the application merits approval 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.