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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: HONOLULU, HI

Date:

**JAN 07 2010**

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).

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Honolulu, Hawaii. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She 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. § 182(a)(6)(C)(i). The applicant is married to a U.S. citizen and 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 U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 19, 2007.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme emotional and financial hardship if the applicant is removed from the United States.

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(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 indicates that the applicant, who had just married her U.S. citizen spouse, entered the United States as a visitor on April 4, 2003. In a sworn statement dated May 19, 2004, the applicant stated that, when asked the purpose of her visit to the United States, she indicated that she sought to enter the United States to pick up some personal belongings and return to Mexico. The applicant further stated that she had made this statement to the immigration inspector because she had been informed by relatives that she would not be allowed to enter the United States if it became known that she was married to a U.S. citizen. In making her statement to the immigration inspector, the applicant sought to shut off a line of inquiry that would have been relevant to her admissibility as a nonimmigrant and which could have resulted in the denial of her admission to the United States.

Therefore, the applicant entered the United States by material misrepresentation and is inadmissible pursuant to section 212(a)(6)(C) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960)(noting that a misrepresentation is material if it tends to shut off a line of inquiry). The applicant does not contest this finding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the U.S. citizen spouse of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 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 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 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.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or 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 includes, but is not limited to, counsel’s brief; statements from the applicant and her spouse; a copy of the mortgage statement for the applicant’s and his spouse’s property; business documents related to the business owned by the applicant’s spouse, as well as letters from customers and clients of the business; letters from friends and family of the applicant and her spouse attesting to the character of the applicant and the hardship her exclusion will create for her spouse; copies of tax records for the applicant and her spouse; copies of bank statements for the applicant and her spouse; copies of bank records related to the applicant’s spouse’s mother; and copies of receipts related to the applicant’s spouse’s travel to California.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that the applicant's spouse owns and operates a business that requires the applicant's spouse's presence to succeed, that the applicant and her spouse own a condominium, that the applicant's spouse is recovering from a knee injury, that the applicant is pregnant and that all of these factors, coupled with the emotional and financial hardship of separation, will result in extreme hardship to the applicant's spouse and their future child if the applicant is excluded.

The applicant's spouse asserts that he is recovering from a knee injury and may have to change careers; that he and the applicant have a successful business in Maui, Hawaii, which he cannot operate without the applicant's help; that he would have to sell their residence if the applicant were removed and that he would suffer extreme emotional hardship if his family were split. He further asserts that the applicant does not have the skills to obtain a good job in Mexico. The applicant's spouse also states that his mother has a mental disorder, suffers from emphysema, is extremely overweight and has to see a psychologist on a weekly basis, and that he has to fly back and forth to California to oversee his mother's financial affairs and home, which he would not be able to do if he had to support the applicant and his child financially in Mexico.

The record contains a statement from [REDACTED], dated March 13, 2007, which establishes that the applicant's spouse suffered a knee injury for which he has undergone surgery. [REDACTED] states that the applicant's spouse has not yet been able to return to work and that the long-term outcome of his surgery is undetermined. [REDACTED] also notes that the applicant's spouse's absence from work has put a significant financial stress on him and the applicant and that "[i]t is likely he will need his wife to help him through this period." While the evidence submitted demonstrates that the applicant's spouse has had knee surgery, it is not sufficiently probative to establish that he has a medical condition that would result in extreme hardship for him in the applicant's absence. The AAO acknowledges the statement from [REDACTED] but notes that it does not indicate the period of time that the applicant's spouse is expected to be out of work; the nature of his knee injury or how that injury could potentially affect his ability to function in his current employment. Neither does [REDACTED] statement indicate the type of assistance he requires from the applicant or over what period of time her assistance will be needed.

The record also does not contain evidence that is sufficiently probative of the financial hardship that [REDACTED] indicates the applicant's spouse is currently experiencing. Further, it fails to contain sufficient proof of the financial hardship that the applicant's spouse would experience in her absence. While there are tax filings and statements from clients of the applicant's spouse's business in Maui, Hawaii, there is no documentation of accrued debt, unpaid bills or imminent financial obligations that are not being met by the applicant's spouse's income. The applicant's spouse indicates that his business in Maui is successful, and statements by the clients of the business confirm this claim. The record also contains copies of mortgage statements for the property owned by the applicant's spouse. However, there is no evidence that the applicant's spouse would be unable to meet his financial obligations, or that his other financial obligations are such that he would be forced to sell this property. Even in a light most favorable to the applicant, having to sell the property would not constitute an extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673 (7<sup>th</sup> Cir.

1985)(affirming that the loss on sale of a home and loss of present employment and its benefits did not constitute extreme hardship, but were normal consequences of removal). Moreover, the record fails to support the applicant's spouse's claim that the applicant does not have the skills to obtain employment in Mexico, thereby eliminating or reducing any additional financial burden on him. The record contains no published country conditions reports on the economy or employment opportunities in Mexico as they relate to the applicant. 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 that the applicant's parents live in Mexico and the record does not indicate that they would be unable or unwilling to assist their daughter financially if she were returned to Mexico. In that the record fails to prove that the applicant would be financially dependent on her spouse if she returned to Mexico, it also does not support the applicant's spouse's assertion that he would be unable to afford to travel to California to oversee his mother's financial interests because of the financial assistance he would be required to provide the applicant in Mexico. Without further evidence of an inability to meet financial obligations or the additional financial burden that the applicant's removal would place on her spouse, the record does not establish that the applicant's spouse would experience significant financial hardship in the applicant's absence.

The applicant and her spouse have asserted that the applicant's spouse will be unable to bear the separation from the applicant and their newborn child if the applicant were to be removed from the United States. The applicant's spouse states that if the applicant were removed, he would become an angry, unstable person and does not think that he could go on with life. The record also contains statement from friends and family of the applicant and her spouse attesting to their relationship and how the applicant's exclusion would affect the family. While the AAO acknowledges these statements and their sentiment, they are insufficient proof that the applicant's spouse would experience extreme emotional hardship in the applicant's absence. No documentary evidence has been submitted to demonstrate the emotional impact of separation on the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

The applicant's spouse also claims that if the applicant is removed he would be unable to work and to care for his elderly maternal grandmother, who lives with him and the applicant. He asserts that his grandmother's health has deteriorated since moving to Hawaii with him and that she needs someone with her most of the time. He states that the applicant works at home in order to care for her. The AAO notes that the record establishes that the applicant's spouse's grandmother lives with him and that she suffers from a range of medical conditions, including severe pulmonary hypertension. The record also establishes that the applicant's spouse's mother has physical and mental health conditions that prevent her from caring for her mother. However, the record does not demonstrate that the health of the applicant's spouse's grandmother has deteriorated since moving to Hawaii or that she is largely incapacitated and is dependent on the applicant or her grandson for her daily care. Accordingly, it does not establish that the applicant's spouse would be unable to maintain his employment while providing for his grandmother's daily needs.

The record as it is currently constituted does not establish that the applicant's spouse will experience extreme hardship if the applicant were to be removed and he remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant's spouse asserts that he cannot speak Spanish and would be unable to find good employment in Mexico. He also contends that he could not move to Mexico because of his responsibility for his grandmother and that her health precludes her from relocating anywhere else. The AAO notes the applicant's spouse's statements regarding his inability to speak, read or write Spanish and the impact that his lack of Spanish language skills would have on his ability to obtain employment in Mexico and to adjust to Mexican culture and society. It further finds the record to provide sufficient evidence to establish that the applicant's spouse is the caretaker for his elderly grandmother, who, he states, has been more of a mother to him than his own mother, and acknowledges that his relocation would leave his grandmother alone in Hawaii. When the applicant's spouse's lack of Spanish-language skills and the emotional impact of abandoning his role of caregiver for his elderly and ill grandmother are combined with the normal disruptions and hardships associated with relocation, the AAO finds that the applicant has established that her spouse would suffer extreme hardship if he moved to Mexico.

However, in that the applicant has not also established that her spouse would suffer extreme hardship if he remained in the United States in her absence, the record does not support a finding that the applicant's spouse would experience extreme hardship if she is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, fails to distinguish his hardship from that commonly associated with removal and exclusion and it does not, therefore, rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.