

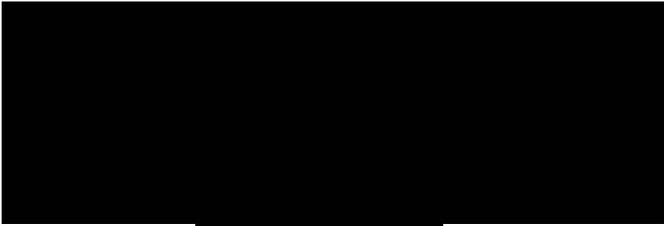
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



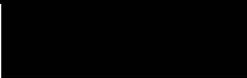
**U.S. Citizenship
and Immigration
Services**

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Hq

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

JAN 08 2010

IN RE:

Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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).

Michael Shumway

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Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering 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). 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), and 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 and children.

The OIC 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 Officer in Charge*, dated January 8, 2007.

On appeal, the applicant's husband states he loves the applicant but he cannot live in Mexico because his children are United States citizens. *Form I-290B*, filed January 27, 2007.

The record includes, but is not limited to, letters from the applicant's husband and daughter, and a letter from [REDACTED] regarding the applicant's husband's employment in the United States. 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...

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant initially entered the United States on November 9, 1984 without inspection. On October 16, 1997, the applicant's lawful permanent resident husband filed a Form I-130 on behalf of the applicant. On March 5, 2001, the applicant's Form I-130 was approved. On April 3, 2001, the applicant's husband became a United States citizen. On April 30, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). In June 2002, the applicant departed the United States. On July 10, 2002, the applicant attempted to enter the United States by presenting a counterfeit entry document. On the same day, the applicant was voluntarily removed from the United States. On December 4, 2002, the District Director, Chicago, Illinois, denied the applicant's Form I-485. On December 23, 2002, the applicant's husband filed another Form I-130 on behalf of the applicant. On August 31, 2004, the applicant's second Form I-130 was approved. On March 6, 2006, the applicant filed a Form I-601. On January 8, 2007, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence, she attempted to enter the United States by presenting a counterfeit I-94 card, and she failed to demonstrate extreme hardship to her United States citizen spouse.

On appeal, the applicant's husband states the applicant purchased the I-94 card from an immigration attorney in Chicago, and she had no knowledge that the I-94 card was counterfeit. Additionally, on July 10, 2002, the date the applicant was apprehended with the counterfeit I-94 card, she claimed that she

thought the I-94 card was valid since she bought it at an attorney's office in Chicago, Illinois. *See Record of Deportable/Inadmissible Alien* (Form I-213), dated July 10, 2002. The AAO notes that it is not the responsibility of the United States Citizenship and Immigration Service (USCIS) to determine if the applicant understands the documents she is submitting on her own behalf; however, it must be established that the applicant has knowledge of the falsity of the document. *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The AAO finds that the record does not establish that the applicant knew the I-94 card was counterfeit; therefore, she is not inadmissible under section 212(a)(6)(C) of the Act for misrepresentation. However, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until June 2002, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her June 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

The applicant is seeking a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act. A waiver under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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.

In a letter dated January 8, 2007, the applicant's husband states he cannot live in Mexico because he has United States citizen children and he could not provide for his family in Mexico. The AAO notes that the applicant's husband is employed in maintenance, 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 there. Additionally, the AAO notes that the applicant's husband is a native of Mexico who speaks Spanish. Furthermore, it has not been established that the applicant's husband has no family ties in Mexico. The applicant's husband states he wants his "children to receive an education in the United States." In an undated letter, the applicant's daughter, [REDACTED] states she cannot concentrate in her college classes because "[the applicant] is not here to help [her] out." The AAO notes that the applicant's youngest son, [REDACTED] is currently residing and attending school in Mexico, and her

older children are in the Navy and attending college. The applicant's daughter claims that she has "the duty of keeping [her] home in order" and she is "very stressed, and also very depressed." The applicant's daughter further states that her father is "very stressed and depressed." The AAO notes that other than the applicant's daughter's statement, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband and daughter are suffering from any depression, or whether any depression is beyond that experienced by others in the same situation. Additionally, the AAO notes that the applicant's children may experience some hardship in relocating to Mexico; however, as noted above, the applicant's children are not qualifying relatives for a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, maintaining his employment. 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 supplying and providing for a home in Chicago and a home in Mexico, where the applicant and his son reside; however, he cannot "provide for double housing." The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her family'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)(9)(B)(i)(II) 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.