identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

H2

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: JAN 08 2010

CDJ 2004 628 165

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:

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, 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 Officer in Charge (OIC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C) for having attempted to enter the United Stats through fraud or misrepresentation. She is the wife of a naturalized U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The OIC 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 husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), dated March 8, 2007.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is excluded from the United States.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter 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, when attempting to enter the United States in January 2003, presented fraudulent documentation. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant asserts that she acted under duress, but 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 United States 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(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 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 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 of proceeding contains, but is not limited to, the following evidence: a statement from the applicant's spouse; copies of resident alien cards and U.S. passports for the applicant's spouse's family; business records and tax documentation for the applicant's spouse; statements from the applicant's spouse's father and brother attesting to the hardship they would experience if the applicant's spouse relocated to Mexico; copies of the applicant's and her spouse's marriage certificate; and a wedding photograph of the applicant and her spouse.

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

On appeal, the applicant's spouse states that he needs the applicant in the United States so they can cultivate their marital and familial relationship. While separation from a family member almost always results in emotional hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," did not intend that a waiver be granted based solely on the existence of a qualifying relationship. The current state of the law establishes that hardship that meets the standard in section 212(i) of the Act, should be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has not submitted any evidence to establish that her spouse would suffer extreme hardship if she were excluded 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. On appeal the applicant's spouse asserts that it would be a hardship for him to relocate to

Mexico as he would have to turn his back on his business obligations, including closing his own business and putting his many employees out of work, ending his accounting assistance to his brother's and father's businesses and terminating his employment with a rice cultivating company that depends on his knowledge and skill. The applicant's spouse also states that it would be a hardship for him to be separated from his family in the United States. The record contains documentation establishing the lawful immigration status and U.S. citizenship of a number of the applicant's spouse's family. Tax documentation demonstrates that the applicant's spouse operates a business.

While the AAO acknowledges the applicant's spouse has family members in the United States, the record fails to document, e.g., an evaluation from a licensed mental health professional, how being separated from his family would affect the applicant's spouse. The record establishes that the applicant's spouse has a business in the United States and the AAO notes the statements from the applicant's spouse's father and brother that indicate he assists them by providing their businesses with accounting services. However, the applicant has submitted no evidence to establish that her spouse would be unable to obtain employment in Mexico. Neither does she demonstrate that the termination of her spouse's accounting assistance to his father's and brother's businesses would result in hardship to them or how such hardship would affect the applicant's spouse, the only qualifying relative in this matter. *See Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996)(holding that emotional hardship caused by severing family and community ties, or the inability to follow a chosen profession is a common result of deportation and does not constitute an extreme hardship.) Accordingly, the record does not contain sufficient evidence to establish that it would constitute an extreme hardship for the applicant's spouse to relocate to Mexico with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband would face extreme hardship if his wife 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, does not 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.