



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: SEATTLE (SPOKANE, WA)

Date: FEB 22 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Seattle, Washington. 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 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 having attempted to procure admission into the United States by fraud or willful misrepresentation and section 212(a)(9)(B)(i)(II) of 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director, dated April 14, 2005.*

On appeal, counsel asserts that the applicant has demonstrated that her spouse and children would suffer extreme hardship if the applicant were removed from the United States. *Attorney's statement, Form I-290B, dated May 10, 2005.*

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a confirmation of pregnancy letter, Family Planning Association of Chelan-Douglas Counties, dated September 3, 2004; an affidavit from the applicant, dated April 26, 2005; medical records for the applicant's daughter; an affidavit from the applicant's spouse, dated April 30, 2005; a statement from the applicant's spouse, dated October 15, 2004; employment letters for the applicant and her spouse; tax statements for the applicant's spouse; bank statements for the applicant's spouse; tenant certifications for the applicant and her spouse; and a monthly rental agreement for the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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

(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 Attorney General [now the Secretary of Homeland Security (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 Attorney General [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 entered the United States without inspection on October 20, 1996 and remained until April 1, 1997. *Form I-601*. The applicant re-entered the United States without inspection in August 2000 and remained until August 2001. *Id.* On September 8, 2001 the applicant entered the United States on a B-2 visa. *Form I-94*. She has remained in the United States since that time. *Form G-325A for the applicant*. The applicant filed her Form I-485 on April 27, 2004.

According to the record, the applicant has been living in the United States full time since August 2000. *Form G-325A for the applicant*. When she entered with the non-immigrant visa on September 8, 2001, she was already residing in the United States. Based on the record, the applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The District Director also found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her last departure from the United States. Service records indicate an August 1, 1999 entry but no record of departure. The applicant failed to note this entry, therefore, any period of unlawful presence is unknown, but since the applicant stated she was in the United States from August 2000 to August 2001 (*Form I-601*), it is not necessary to determine additional unlawful presence.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully

resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The AAO notes that counsel erred in stating that the applicant's child was a qualifying relative. *Attorney's statement, Form I-290B*. The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States, while both of his parents were born in Mexico. *Form G-325A for the applicant's spouse*. The record does not mention any additional family ties the applicant's spouse may have in Mexico. The applicant's daughter has an on-going asthmatic condition which worsened while living in Mexico. *Affidavit for the applicant's spouse, dated April 26, 2005*; *See Also medical records for the applicant's daughter*. While the AAO acknowledges the applicant's daughter's health condition, it notes that the applicant's daughter is not a qualifying relative. The record does not address any medical conditions that the applicant's spouse may have. The record also fails to address country conditions in Mexico that would make it difficult for the applicant's spouse to accompany the applicant. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse fears that if he is separated from the applicant, he will not have enough money to pay for their living expenses which include rent, food, and clothes for their children. *Affidavit from the applicant's spouse, dated April 30, 2005*. The applicant helps to financially support her family. *Id.* The applicant's daughter is asthmatic. *Id.*; *See also medical records for the applicant's daughter*. Due to her illness, the applicant's daughter cannot accompany the applicant to Mexico. *Id.* As a result, the applicant's spouse does not think that he would be able to take their daughter to all of her doctor's appointments for he would be unable to take sufficient time off of work. *Id.* The record shows that the applicant was scheduled to give birth on May 1, 2005. *See confirmation of pregnancy letter, Family Planning*

Association of Chelan-Douglas Counties, dated September 3, 2004. The AAO notes that the record fails to demonstrate that childcare is not an available option to care for the applicant's newborn as well as to accompany her daughter to medical appointments. Furthermore, the AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. While the AAO recognizes that separation from a loved one is not easy, U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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 spouse will endure 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 deportation or exclusion and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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) 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.