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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

#3

FILE:

Office: LOS ANGELES

Date: APR 07 2010

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found inadmissible to the United States under 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 entry to the United States by fraud and/or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to be able to reside in the United States with his U.S. citizen spouse and children, born in 2001 and 1999.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Interim District Director*, dated November 9, 2004.

In support of the appeal, counsel for the applicant submits a brief, dated December 8, 2004, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Regarding the interim district director's finding that the applicant was inadmissible under Section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, the record establishes that the applicant attempted to procure entry to the United States in January 1996 by presenting a fraudulent U.S. birth certificate. *Record of Deportable Alien*, dated January 13, 1996. The interim district director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation. The applicant does not contest the interim district director's finding of inadmissibility. Rather, he seeks a waiver of inadmissibility.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative for purposes of a 212(i) waiver, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant's U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to reside in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration she states that she would suffer emotional hardship were her spouse physically absent from her life. She further notes that her children would suffer due to long-term separation from their father, thereby causing extreme hardship to the applicant's spouse, the only qualifying relative in this

case. Moreover, the applicant's spouse asserts that she will suffer financial hardship were her spouse to relocate abroad due to his inadmissibility, as he is the only source of income at this point in time as she is not working. *Letter from* [REDACTED] dated March 6, 2002. Finally, counsel notes that the applicant's spouse is enrolled at Cerritos College and without her spouse's physical presence, she will be unable to continue her studies as the applicant works full time, thereby allowing her to go to school and care for the children. *Brief in Support of Appeal*, dated December 8, 2004.

To begin, it has not been established that the applicant's U.S. citizen spouse would suffer extreme emotional hardship were the applicant to relocate abroad due to his inadmissibility. The record establishes that the applicant's spouse has a support network of family, including her mother and siblings, residing in the United States; it has not been established that they would be unable to provide the emotional and/or financial support she may need due to her spouse's physical absence. Nor has it been established that the applicant's children's hardships due to the applicant's physical absence will cause extreme hardship to the applicant's spouse, the only qualifying relative in this case. In addition, it has not been established that the applicant's spouse is unable to travel to Mexico on a regular basis to visit her spouse. 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)). Finally, regarding counsel's assertion that the applicant's spouse will suffer academic disruption due to her spouse's relocation abroad, the AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. 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 exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant's spouse, it has not been established that the applicant's spouse would experience extreme financial hardship were her spouse to relocate abroad due to his inadmissibility. To begin, counsel has failed to establish that the applicant would be unable to obtain gainful employment in Mexico, thereby affording him the opportunity to assist with the family's finances. In addition, no documentation has been provided establishing that the applicant's spouse is unable to obtain gainful employment to support herself should the need arise, as she has done in the past, as noted on the Form G-325A, Biographic Information. *Form G-325A, Biographic Information for* [REDACTED] dated September 21, 1998. While the applicant's spouse may need to make adjustments with respect to the family's emotional and financial care while the applicant relocates abroad due to his inadmissibility, it has not been established that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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 based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will suffer extreme emotional and/or financial hardship due to the applicant's inadmissibility.

Extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, counsel contends that the applicant's spouse will suffer emotional hardship due to separation from her mother and siblings and moreover, her children will suffer hardship due to separation from their grandmother and their aunts. *Supra* at 4. The applicant's spouse further asserts that she wants to live and grow old in the United States. *Supra* at 1.

Counsel has not established that the applicant's spouse would experience extreme emotional hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility. Nor has it been established that the applicant's children would suffer extreme hardship were they to relocate abroad, thereby causing extreme hardship to the applicant's spouse. In addition, it has not been established that the applicant's spouse's extended family members would be unable to travel to Mexico to visit or alternatively, that the applicant's spouse would be unable to travel to the United State to visit her family. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the

hardship she would face rises to the level of “extreme” as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.