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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H5

APR 14 2010

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 1992 765 286 relates)

Date:

IN RE: Applicant: [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:

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 District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, attempted to procure entry to the United States in March 1999 by presenting a Form I-586, Border Crossing Card, belonging to another individual. She was thus 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 entry to the United States by fraud and/or willful misrepresentation.¹ The applicant is applying for 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 father and lawful permanent resident mother.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 6, 2007.

On appeal, counsel for the applicant submits a brief, dated November 1, 2007, 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, 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 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 (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...

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, she is requesting a waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) 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. In the present case, the applicant's U.S. citizen father and lawful permanent resident mother are the only qualifying relatives to be considered.

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 must first establish that her U.S. citizen father and/or lawful permanent resident mother would encounter extreme hardship were they to remain in the United States while the applicant resides abroad due to her inadmissibility. With respect to this criteria, the applicant's father contends that he and his spouse will suffer hardship as they need their daughter to care for them emotionally, physically and financially. Specifically, the applicant's father declares that he and his wife suffer from numerous medical problems. He notes that he has diabetes, inflammation near his heart, an inability to lift anything more than 15 pounds, and pain in his knees and foot. Due to his medical issues, he is unable to work, has no insurance, and is no longer eligible for disability payments. He further notes that his spouse is diabetic and was operated for a hernia. Due to these medical conditions, the applicant's father contends that he needs his daughter to help care for them. Moreover, the applicant's father contends that he and his wife never learned to drive and do not read or write in English, and are suffering hardship due to the inability to communicate and get around. Finally, the applicant's father asserts that their youngest daughter, who just started high school, suffers from asthma and is pre-diabetic, and due to their age, health, literacy and language problems, they are unable to properly support her and ensure that she is doing her schoolwork. *Declaration of* [REDACTED], dated October 2, 2007.

The applicant's father contends that he needs the applicant to reside in the United States and help care for him, his spouse and their youngest daughter, emotionally and financially. He asserts that

one daughter, [REDACTED] a lawful permanent resident, lives with them and is very helpful, but she cannot always be there for them as she works two jobs. A son, [REDACTED] a lawful permanent resident, is married and has his own responsibilities. Another son, [REDACTED] a lawful permanent resident, is unable to help them as he is paying his mortgage. Finally, his son [REDACTED], a lawful permanent resident, lives with them but is unable to help them because he has a lot of debt. *Id.* at 2.

It has not been established that the applicant's parents would suffer extreme emotional hardship were they to remain in the United States while the applicant resides abroad. The record establishes that the applicant's parents have a support network from the community, as noted by the letter provided by [REDACTED], and of close family members, including four adult children in the United States, two who live with the applicant's parents; it has not been established that they are unable to provide emotional support when needed. Moreover, it has not been established that the applicant's parent's youngest daughter will experience extreme hardship were her sister unable to reside in the United States, thereby causing extreme hardship to her parents, the only qualifying relatives in this case. The AAO notes that the letters provided from the applicant's sister's school confirm that she is a good student, actively involved in her academics, the school's administration and her community. *Letters from [REDACTED] Language [REDACTED] Attendance [REDACTED] dated October 1, 2007 and [REDACTED] [REDACTED] dated October 1, 2007.*

Furthermore, with respect to the applicant's parents' medical conditions, the letter from the applicant's father's treating physician and the medical documentation provided by counsel do not detail the gravity of the situation for the applicant's parents and youngest sibling, the short and long-term treatment plans, what specific assistance they need from the applicant, and what hardships they will face were the applicant to continue residing abroad, to establish extreme hardship to the applicant's parents. 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)).

The AAO notes that the applicant has never resided in the United States. The applicant's parents have been able to care for themselves and their youngest daughter. It has not been established that continuing to care for themselves, with the support of the adult children currently residing in the United States and the community, would cause them extreme hardship. The record thus fails to establish that the applicant's parents' emotional and physical care and survival directly correlate to the applicant's physical presence in the United States. While the applicant's parents may need to make alternate arrangements with respect to their daily care and the care of their youngest child, it has not been established that such arrangements would cause the applicant's parents extreme emotion and/or physical hardship.

Although the depth of concern over the applicant's immigration status is neither doubted nor 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.

With respect to the applicant's mother's assertion in her declaration that she and her husband need the applicant to reside in the United States to help them financially, no documentation has been provided outlining the applicant's parents' and adult children's current income, expenses, assets and liabilities and their financial needs, to establish that the adult children are unable to assist their parents financially and moreover, that without the applicant's presence in the United States, her parents will suffer extreme financial hardship. In addition, it has not been established that the applicant is unable to obtain gainful employment in Mexico to assist in the finances of her parents' U.S. household. While the applicant's parents may need to make adjustments with respect to the family's financial situation while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant's parents extreme financial hardship.

The AAO recognizes that the applicant's parents will endure hardship as a result of continued separation from the applicant. However, their situation, if they remain 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 parents will suffer extreme emotional, physical and/or financial hardship due to the applicant's residence abroad due to her inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. This criteria has not been addressed. As such, it has not been established that the applicant's parents, natives of Mexico, would suffer extreme hardship were they to relocate to their home country to reside 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 parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse/child is removed from the United States and/or refused admission. There is no documentation establishing that the applicant's parents' hardships would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, 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 under section 212(i) of the Act, 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.