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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**

H5

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: APR 15 2010

(CDJ 2004 821 898)

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Ciudad Juarez, Mexico and 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 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and seeks 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 spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated January 12, 2007.

On appeal, the applicant's spouse states that he needs the applicant to take care of him because he is sick. *Form I-290B, Notice of Appeal to the Administrative Appeals Office; Statement of the applicant's spouse*, dated January 26, 2007.

In support of the waiver the record includes, but is not limited to, a statement from the applicant's spouse; gas, electricity and telephone bills; a mortgage statement; and money transfers. The entire record was reviewed and considered in rendering this decision. The AAO notes that the record also includes several documents in the Spanish language unaccompanied by certified English translations. Accordingly, the AAO will not consider these documents. *See* 8 C.F.R. § 103.2(b)(3).

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.

The record reflects that the applicant was admitted to the United States in January 2002 with a valid B1/B2 Visa/Border Crossing Card. *Form OF-194, Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated March 8, 2006. She overstayed her visa, remaining in the United States until December 2002. *Id.* On January 2, 2003, she attempted to gain admission to the United

States by presenting her B1/B2 Visa/Border Crossing Card and fraudulent pay receipts to immigration authorities at Roma, Texas. *Form I-867A, Record of Sworn Statement*, dated January 2, 2003. On January 2, 2003 the applicant was expeditiously removed. *Id.*; *Form I-860, Notice and Order of Expedited Removal*. On January 3, 2003 she crossed the border in a car driven by a friend and claims that the immigration officer never asked for documents nor asked her any questions. *Form OF-194, Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated March 8, 2006. The applicant remained in the United States from January 2003 to May 2003. *Form G-325A, Biographic Information, for the applicant*. She returned to Mexico in May 2003. *Id.* Based on her presentation of fraudulent documents to obtain admission to the United States, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from 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. The plain language of the statute indicates that hardship that the applicant would experience if her waiver request is denied is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the 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 whether he resides in 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 relocates to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form I-130, Petition for Alien Relative*. The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. While the AAO acknowledges the statement of the applicant's spouse asserting that he is a sick man suffering from diabetes and heart problems, and must take medication, it notes that the record does not support these claims as it fails to include documentation from a licensed healthcare professional regarding the physical or psychological

health of the applicant's spouse. *Statement from the applicant's spouse*, dated January 26, 2007. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Furthermore, the record makes no mention of whether the applicant's spouse would require treatment in Mexico and if so, whether he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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 was born in Mexico. *Form I-130, Petition for Alien Relative*. As previously noted, the applicant's spouse asserts that he is a sick man who suffers from diabetes and heart problems, and must take medication. *Statement from the applicant's spouse*, dated January 26, 2007. While the AAO acknowledges these assertions, it notes that the record fails to support them, as it does not include documentation from a licensed healthcare professional regarding the physical or psychological health of the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 record also fails to address whether the applicant's spouse has additional family members in the United States who could assist with his care. The record includes gas, electricity and telephone bills, a mortgage statement and money transfers documenting the expenses of the applicant's spouse. *Gas, electricity and telephone bills; Mortgage statement; Money transfers*. While the AAO acknowledges these documented expenses, it notes that there is no evidence in the record that establishes the applicant's spouse's income. Accordingly, the AAO is unable to determine the financial impact of the applicant's absence on her spouse.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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)(6)(C) 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.