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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

[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA
(consolidated therein)

Date:
AUG 02 2010

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tavia Syed
for

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that 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 enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 husband and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 22, 2006.¹ The AAO notes that the District Director determined that the applicant was ineligible for a waiver under section 212(h) of the Act; however, there is no evidence in the record that the applicant is inadmissible to the United States under a section that could be waived by a 212(h) waiver. The AAO finds that the record establishes that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and she is applying for a waiver under section 212(i) of the Act.

On appeal, the applicant, through counsel, asserts that the District Director “failed to consider evidence that [the applicant] submitted in support of [her] application. Specifically, USCIS failed to consider a psychological evaluation of [the applicant’s] Lawful Permanent Resident husband.” *Form I-290B*, filed September 4, 2007. Additionally, counsel claims that the applicant’s son “has been diagnosed recently with a speech and language impairment and is receiving special education at his school.” *Id.*

The record includes, but is not limited to, counsel’s appeal brief, statements from the applicant and her husband, letters of support for the applicant and her family, tax documents, a psychological evaluation of the applicant’s husband, neuropsychological documentation for the applicant’s son, and an individualized education program assessment on the applicant’s son. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.

¹ The AAO notes that even though the District Director’s decision is dated December 22, 2006, the decision was not mailed to the applicant until July 31, 2007.

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

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that on January 14, 1996, the applicant attempted to enter the United States by presenting another individual's Resident Alien Card (Form I-551) and was denied admission. On or about January 18, 1996, the applicant entered the United States without inspection. On August 12, 2004, the applicant filed a Form I-601. On December 22, 2006, the District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of another person's resident alien card in an attempt to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences as a result of her inadmissibility is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children would suffer if she were to be denied admission to the United States. Section 212(i) of the Act provides a waiver solely where an applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children will not be considered in this proceeding except to the extent that it creates hardship for the qualifying relative, their father. Once 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).

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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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. The BIA has also held:

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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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). Only "in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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

In a statement dated August 29, 2007, the applicant's husband states he has lived in the United States for over twenty-six years and if he joins the applicant in Mexico, "[t]he wages in Mexico are very low and it is very difficult to find work." The AAO acknowledges that the applicant's husband has resided in the United States for many years and would experience hardship upon relocation. However, it also notes that he is a native of Mexico who spent his childhood years in Mexico, he speaks Spanish, and two of his sisters and mother continue to reside in Mexico. *See psychological evaluation, for the applicant's husband*, dated June 21, 2006. Additionally, the AAO notes that the record fails to contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation and the record does not demonstrate that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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 AAO notes that, on March 14, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to northern Mexico, specifically the area along the United States-Mexico border. While the AAO acknowledges the rise in violence and criminal activity in northern Mexico, it does not find the record to indicate that the applicant's husband would be relocating to this area of Mexico. It notes that the record indicates that the applicant and her husband were born in the central state of Jalisco. Therefore, the AAO does not find the record to establish that the applicant's husband would be at risk if he returned with his wife to Mexico.

In a brief dated August 31, 2007, counsel states the applicant's son "has been diagnosed with a severe speech and language impairment that requires special education services here in Los Angeles." In a letter dated August 29, 2007, [REDACTED] states that "it is imperative that [the applicant's son] remain in the United States and not move to Mexico." [REDACTED] claims that "having to adjust to a Spanish-language school setting could potentially be very traumatic and difficult for him." The AAO notes that the applicant's son's primary language is Spanish. *See language and speech assessment report*, dated March 15, 2007. [REDACTED] also claims that "it is unlikely that the special education services [the applicant's son] requires will be available to him in Mexico." The AAO notes that other than [REDACTED]' statement, the record contains no documentary evidence that establish that conditions in Mexico are such that the applicant's son could not receive special education services. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. Counsel states the applicant's children "only know life here in the United States where they have spent their entire lives." The AAO acknowledges that the applicant's children may experience some hardship in relocating to Mexico; however, as previously noted, hardship to the applicant's children is not directly relevant to a determination of extreme hardship in section 212(i) proceedings. Based on

the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

The record also fails to establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his landscaping business and with access to special education services for his son. Counsel states that "[t]he factors present in this case, including [the applicant's husband's] fragile psychological condition...and the sorrow that separation would cause this family" rise to the level of extreme hardship if the applicant's waiver application is denied. The applicant's husband states he is suffering "a great deal of stress and sadness" and he is "having trouble sleeping." Counsel states the applicant's husband "is extremely worried about separating from [the applicant]." He states "[t]hey are a very close-knit family." In a psychological evaluation dated June 21, 2006, [REDACTED] states that if the applicant and her husband are separated, the applicant's husband would suffer "acute adjustment disorder with depressed mood, resulting in disturbances in sleep and appetite, irritability, and poor concentration and memory." Additionally, [REDACTED] states the applicant's husband would "also have painful physical consequences as well." Counsel states the applicant's husband suffers from gastritis "that will worsen if [the applicant] is deported." The applicant's husband states the applicant "prepares home-cooked meals for [him] to help [him] control [his] gastritis symptoms." The AAO notes that other than these statements, no medical documentation has been submitted establishing that the applicant's husband is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.* Additionally, there is no evidence in the record that the applicant's husband requires the applicant's "home-cooked meals" or that there are no other healthy food alternatives for him.

Counsel states that the applicant's husband and children "will have to stay in the United States because he will never earn enough money in Mexico to support his family and himself." In a statement dated April 8, 2006, the applicant states she stays home to take care of the children and her husband "does not make enough money to pay for a full-time babysitter." While the AAO notes the applicant and her husband's claims of financial hardship, it does not find the record to support them. The record contains no documentation that establishes the applicant's husband's expenses in the applicant's absence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.* The record also fails to offer proof that the applicant's husband would be unable to afford childcare to assist him in meeting his parental responsibilities. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she would be unable to obtain employment in Mexico and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO does not find the applicant to have established that her husband would experience extreme hardship if her waiver application were to be denied and he remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(6)(C)(i) 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.