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

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FILE: [redacted] Office: SANTA ANA, CA Date: JAN 08 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i)

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.

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 Field Office Director, Santa Ana, California. The matter 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 and then entering the United States using fraudulent documents. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to her lawful permanent resident husband and denied the application accordingly. *Decision of the Field Office Director*, dated June 7, 2007.

The record contains, *inter alia*: two letters from the applicant's husband, Mr. [redacted] sworn statements from the applicant; letters from the applicant's and Mr. [redacted] employers; financial and tax documents; letters of support; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) of the Act provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien. . . .

In this case, the record shows, and counsel concedes, that the applicant first entered the United States in 1996 without inspection. *Appeal Brief in Support of INA § 212(a)(9)(B)(v) Waiver*, dated July 20, 2007. The record further indicates, and counsel concedes, that in 1999, the applicant attempted to enter the United States by presenting a counterfeit Mexican Border Crossing Card in another

person's name. *Id.* The field office director further found, and counsel does not contest, that the applicant was denied admission, found to be inadmissible, and removed from the United States. *Id.* The field office director found, and the applicant admits, that about 15 to 30 days after her deportation, she again applied for admission using another counterfeit document and was admitted. *Record of Sworn Statement*, dated March 2, 2007 (applicant stating that she entered the United States "[a]bout 15 to 30 days after [her] first attempt" and that she "did the same thing [she] did at the first time"). Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit.

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 imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

In this case, the applicant's husband, Mr. [redacted], states that he has lived in the United States since 1985, entering when he was fifteen years old. He states he has not left the United States for more than two weeks at a time since he first entered the country. Mr. [redacted] states his entire family lives in the United States and that he has no relatives in Mexico. Mr. [redacted] states it would be extremely hard for him to obtain employment in Mexico because he has never worked there and has been out of the country for over twenty years. In addition, Mr. [redacted] claims he and his wife have both been employed since they first arrived in the United States and contends he does not make enough money to cover his living expenses on his own should his wife's waiver application be denied. He claims that if his wife's waiver application were denied, he would lose his home and it would break up his marriage. *Letters from* [redacted], dated July 9, 2007, and April 24, 2007.

Upon a complete review of the record, it is not evident that the applicant's spouse will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if Mr. [redacted] remains in the United States without his wife, he will suffer extreme financial hardship. According to the financial documents in the record, the applicant worked and paid taxes, contributing significantly to the couple's household expenses while in the United States. For instance, the most recent tax documents in the record show that in 2006, the applicant earned $19,810

working three different jobs and Ms. [redacted] earned $19,632. *2006 Wage and Tax Statements (Form W-2)*. Similarly, in 2005, the applicant earned $16,925 and Mr. [redacted] earned $19,044. *2006 Wage and Tax Statements (Form W-2)*. Documentation in the record shows that Mr. [redacted] monthly expenses total over $3,000, including: mortgage of $2,700, homeowner insurance of $53, gas bill of $48, electric bill of $124, water bill of $119, and waste collection of $84. A letter in the record from Mr. [redacted] employer shows that Mr. [redacted] works full-time as a Greenkeeper in a golf club and earns $11 per hour. *Letter from* [redacted], dated January 18, 2007. Based on this information, the AAO finds that if the applicant's waiver application were denied and Mr. [redacted] remained in the United States, he would experience extreme financial hardship as his monthly expenses far exceed his income.

Nonetheless, there is insufficient evidence to show that Mr. [redacted] would experience extreme hardship if he moved back to Mexico, where he was born, to be with his wife to avoid the hardship of separation. Although the AAO recognizes Mr. [redacted] has lived in the United States since 1985, there is no allegation that his situation is unique or atypical compared to other individuals in the same situation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Mr. [redacted] does not claim that he has any physical or mental health issues that would make his transition to living in Mexico again more difficult than would normally be expected. Similarly, Mr. [redacted] does not contend that any of his family members living in the United States have any special needs that require his assistance and he does not claim they could not visit him in Mexico. In addition, Mr. [redacted] does not contend he does not speak Spanish. To the extent he claims he would be unable to find employment in Mexico, there is nothing in the record to suggest that Mr. [redacted] who is currently thirty-nine years old, could not find comparable employment in Mexico as a gardener. *Biographic Information (Form G-325A)*, dated September 26, 1997 (stating he was a gardener since 1989). Even assuming some economic difficulty, there is no evidence the level of harm rises to extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of 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).

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. The AAO notes, however, that the applicant's initial entry to the United States without inspection, her attempted entry using a fraudulent document, and her subsequent entry using a fraudulent document approximately two weeks after she had been removed would weigh heavily against the favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.