identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

[redacted]

H5

FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 06 2010

IN RE: [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:

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 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 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 United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i)[1] of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and their United States citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated February 26, 2007.

On appeal, the applicant contends that her family would suffer extreme hardship. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO).*

In support of the waiver, the applicant submits a brief. The record also includes, but is not limited to, a medical statement for the applicant's child; Head Start In-House Referral sheets; a statement from the applicant's spouse; employment letters and W-2 forms for the applicant and her spouse; tax returns for the applicant and her spouse; a bank statement; a telephone bill; a health insurance card; a car insurance statement; and a medical letter for the applicant. 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 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

[1] The AAO notes that the District Director incorrectly found the applicant eligible to be seeking a waiver under section 212(h) of the Act.

> 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 on January 21, 1997 the applicant attempted to gain admission to the United States by presenting a false border crossing card to an immigration official at the port of entry in San Ysidro, California. *Form I-213, Record of Excludable Alien*, dated January 22, 1997. As such, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact and must seek a waiver of inadmissibility under section 212(i).

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 or her children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant 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. Hardship to non-qualifying relatives is considered only to the extent that it causes hardship to the qualifying relative. 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 record does not address how the applicant's spouse would be affected if he resides in Mexico. The record does not address whether the applicant's spouse has any familial or cultural ties to Mexico. The record does not address whether the applicant's spouse speaks Spanish and how his language abilities, or lack thereof, would affect his adjustment 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. The record makes no mention of whether the applicant's spouse suffers from

any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether he would be able to receive adequate care.

The applicant notes that her children have been exhibiting behavioral problems and they might not be able to receive the medical attention needed for their conditions in Mexico. *Applicant's brief*, dated March 20, 2007. The record includes a statement from a physician noting that one of the applicant's children is being referred for behavioral problems to a specialist. *Statement from* [redacted], dated March 6, 2007. The record also includes Head Start referral sheets for the applicant's other child addressing behavioral issues. *In-House Referral for Services sheet*, dated October 23, 2006 and November 25, 2005. While the AAO acknowledges that the applicant's children have been referred for assessment of their behavioral problems, it notes that the record does not include any diagnoses of these problems or the treatment or assistance they require. Neither does the record include documentation, such as published country conditions reports, to show that the applicant's children would be unable to receive adequate treatment for any problems they may have in Mexico. 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 applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children may encounter upon relocation would affect the applicant's spouse, the only qualifying relative. 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 the United States and his mother lives in California. *Birth certificate; Form G-325A for the applicant's spouse.* The applicant states that she and her spouse work as a team for the sake of their children's welfare. *Applicant's brief.* She notes that if she were unable to remain in the United States, the welfare of her children would be compromised. *Id.* While the AAO acknowledges that the applicant's children have been referred for assessment of their behavioral problems, the record, as previously noted, fails to provide diagnoses of these problems or the type of treatment or assistance they may require. Accordingly, the AAO is unable to judge how any problems experienced by the applicant's children would affect their father in the applicant's absence. Further, the AAO notes that the record indicates that the applicant's parents reside in the same city as the applicant and the record does not indicate that they are unwilling or unable to assist in caring for their grandchildren. *Form G-325A, Biographic Information, for the applicant.* It also observes that the record fails to establish that the applicant's spouse could not rely on his family in the United States to assist him with his childcare responsibilities. While the record includes a telephone bill and car insurance statement showing various expenses for the applicant and her spouse, the AAO finds that the record fails to address whether the applicant's spouse would suffer on a financial level if separated from the applicant. *See telephone bill and car insurance statement.* The record also fails to establish that the applicant would be unable to obtain employment in Mexico and contribute to her family's financial well-being from outside the United States.

The applicant's spouse notes that being separated from the applicant would cause his family to greatly suffer, as he and the applicant rely upon each other for support. *Statement from the applicant's spouse*, dated April 9, 2004. 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.