

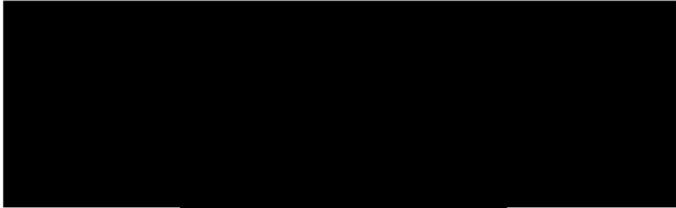
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAR 09 2010**
CDJ 2005 512 341 (relates)

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 District Director, Mexico City, Mexico, 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 is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen wife and daughter.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 28, 2007.

On appeal, the applicant, through counsel, asserts that the "decision fails to specify any facts peculiar [sic] to this case." *Appeal Brief*, dated March 23, 2007. Additionally, counsel claims that the applicant's United States citizen "wife would suffer extreme hardship if [the applicant] were not admitted to the United States." *Id.*

The record includes, but is not limited to, counsel's brief and affidavits from the applicant's wife. 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.
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- (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...

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....
(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant entered the United States in 1992 and 1995 by presenting a fraudulent visa. On an unknown date, the applicant departed the United States. In August 2002, the applicant entered the United States without inspection. In September 2003, the applicant voluntarily departed the United States. On September 20, 2004, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On January 6, 2005, the applicant's Form I-130 was approved. On April 3, 2006, the applicant filed a Form I-601. On February 28, 2007, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

Based on his use of a fraudulent document 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) of the Act. Additionally, the applicant accrued unlawful presence from August 2002, when he entered the United States without inspection, until September 2003, when he departed the United States. The applicant is seeking admission within ten years of his September 2003 departure from the United States and is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

The applicant has applied for section 212(i) and section 212(a)(9)(B)(v) waivers of the bars to admission resulting from violations of sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Waivers under

sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant or his child experiences upon removal is not directly relevant to a determination of extreme hardship under sections 212(i) and 212(a)(9)(B)(v) of the Act. The only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

In his brief, dated March 23, 2007, counsel contends that of the seven cited precedent decisions in the District Director’s decision, none involve spousal separation as a hardship factor. The AAO notes that two of the cases cited by the District Director, *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), relate to the exercise of discretion in application for permission to reapply after deportation or removal cases and should not have been cited in the District Director in his discussion of extreme hardship. However, the other cases referenced by the District Director were not cited because they are similar to the case on appeal, but for their discussion of what is considered extreme hardship.

Counsel states that if the applicant “is not admitted[,] his wife must either live alone without [the applicant] or quit her job that now supports herself and her child and [the applicant], and move to Mexico where she has no memory of ever having resided.” The AAO notes that the applicant’s wife is a native and citizen of the United States and she may experience hardship in relocating to Mexico. However, the record does not establish that she has no transferable skills that would aid her in obtaining a job in Mexico or that there are no employment opportunities for her there. Furthermore, the AAO notes that it has not been established that the applicant’s wife does not speak Spanish or that she has no family ties to Mexico. In fact, the AAO notes that the record includes a statement from the applicant’s wife written in Spanish. The record also fails to indicate that the applicant’s wife has a medical condition, physical or mental, that would preclude her from joining the applicant in Mexico. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, the record does not establish extreme hardship to the applicant’s wife if she remains in the United States, maintaining her employment. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. In an affidavit, dated March 23, 2007, the applicant’s wife states that while the applicant has been in Mexico, she suffered a miscarriage but subsequently delivered a daughter on May 12, 2006. The applicant’s wife states that before she became pregnant with her daughter, she was diagnosed with cervical dysplasia and the doctor recommended surgery. However, she could not afford to have the surgery. She further states that the pregnancy that resulted in her daughter’s birth was a difficult one, which she had to face alone. The AAO notes that, while the record establishes that the applicant’s wife was pregnant, it fails to include evidence that demonstrates she previously miscarried, had a problem pregnancy or was diagnosed with cervical dysplasia. It further fails to include any documentation to establish how separation from the applicant has affected the applicant’s wife’s mental/emotional state.

The AAO also notes that the record fails to demonstrate that the applicant would be unable to contribute to his family’s financial well-being from outside the United States. In fact, the AAO notes that the applicant is employed in Mexico. Moreover, the United States Supreme Court has held that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant's wife states she is raising her daughter alone and her daughter is suffering. The AAO notes that the applicant's daughter may be experiencing hardship as a result of her separation from the applicant and may experience hardship in relocating to Mexico. However, she is not a qualifying relative for the purposes of 212(a)(9)(B)(v) and 212(i) proceedings and the record does not demonstrate how any hardship she might suffer would affect her mother, the only qualifying relative.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he 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) and section 212(a)(9)(B)(i)(II) 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.