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U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
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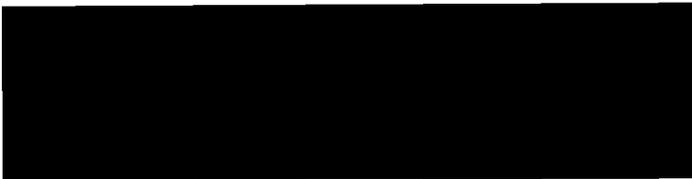
IN RE:

Applicant:



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:



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, [REDACTED] 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the daughter of parents who are lawful permanent residents. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated May 8, 2007.* The applicant submitted a timely appeal.

On appeal, counsel asserts that the applicant's parents would experience extreme hardship if their daughter is denied admission to the United States. Counsel contends that the director failed to fully consider the merits of the case and made unfounded assumptions about the specialized care that the applicant provides to her parents. Counsel asserts that the psychological evaluation of the applicant's parents demonstrates extreme hardship. Counsel asserts that the director failed to give proper weight to the declaration by the applicant's parents, and failed to consider that her parents are affected by the hardship experienced by their daughter.

The AAO will first address the finding of inadmissibility. 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.

The record conveys that on September 4, 1995, the applicant sought to gain admission into the United States by presenting a valid Resident Alien Card bearing the name [REDACTED] that she purchased for \$400 from a vendor in Tijuana, Mexico. She is therefore inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of her true identity and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's lawful permanent resident parents. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to remaining in the United States without the applicant, the psychological evaluation of the applicant's parents, dated June 21, 2007, by [REDACTED] conveys the following. The applicant's parents depend on their daughter for "care, assistance, monitoring, transportation, translation and love." The applicant cleans, cooks, and helps her parents shower and dress. Her parents would experience severe stress, anxiety, depression, and hardship without their daughter. The applicant's parents are worried that their daughter would be alone in Mexico and

unable to work due to injuries from a work-related accident and because she has a limited education. She cannot perform any job requiring muscle strain, and has back aches that keep her in bed for days. Her reading and writing abilities are at the third-grade level so she would not be able to hold an office job. The letter by [REDACTED] dated April 17, 2006, conveys that the applicant's parents have chronic hypertension for which they take medication. In her declaration dated May 3, 2006, the applicant asserts she takes care of her parents and that they live with her. She conveys that all of her siblings live in the United States legally, there is nothing for her in Mexico, and at her age she will not find employment in Mexico. In their declaration, the applicant's parents maintain that since they have been in the United States they have always lived with the applicant, who prepares special meals to control their hypertension and makes them feel comfortable.

Family separation must be considered in determining hardship. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

While the AAO acknowledges that the applicant's parents have hypertension and will experience emotional hardship due to separation from their daughter, we find that they have not fully demonstrated how their emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission. Even though the applicant's parents assert that they are taken care of by the applicant and due to their age it would be difficult to live anywhere else, the record shows that the applicant's parents have a daughter and two sons living in La Puente, California, which is the city where the applicant lives with her parents. The AAO finds that the applicant's parents have not fully demonstrated why they cannot live with and be taken care of by their other adult children living in La Puente, California.

Although the applicant's parents are concerned about her welfare in Mexico, the record suggests that the applicant's husband lives in Mexico. There are no medical records establishing that the applicant would be unable to obtain employment in Mexico due to work-related injuries, and there is no assertion made that her husband would be unable to support her.

In considering all of the hardship factors alleged, which factors are the depression the applicant's parents will feel due to separation from their daughter not having her to take care of them and their concern about her well-being in Mexico, the AAO finds that when those factors are combined they fail to demonstrate that the applicant's parents will experience extreme hardship if they remain in the United States without her. Although the AAO recognizes that the applicant's parents will experience some emotional hardship on account of separation from their daughter, we find that they have two sons and a daughter who live in La Puente, California, who are available to take care of them if they remain in the United States without the applicant. Moreover, even though the AAO

acknowledges the concern of the applicant's parents about their daughter's welfare in Mexico, the record indicates that the applicant has a husband living in Mexico. No documentation has been provided of the applicant's health problems, which documentation is needed to demonstrate that she would be unable to find employment in Mexico. Even assuming she has health problems, we note that she has not asserted that she would not be financially supported by her husband. When the combination of hardship factors is considered in the aggregate, they fail to establish extreme hardship to the applicant's parents if they remained in the United States without her.

It is noted that there is no claim of economic hardship to the applicant's parents if they were to join her to live in Mexico.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Because the applicant is statutorily ineligible for relief, no purpose is 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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.