

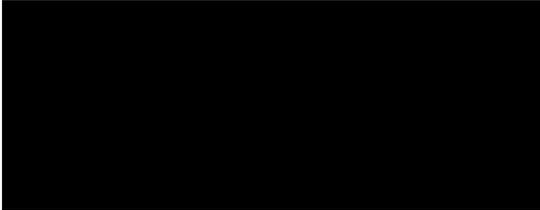
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



HS

FILE:



CDJ 2004 792 316

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

MAR 29 2010

IN RE:



APPLICATION: Application for Waiver of Ground 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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 44-year-old 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 (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured admission into the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved relative visa petition based on her marriage to a citizen of the United States, and she seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Director*, dated Mar. 20, 2006. On appeal, the applicant's husband contends that the denial of the waiver imposes extreme hardship on him. See *Form I-290B, Notice of Appeal*.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they married in Illinois on November 8, 1997, and several letters from the applicant's husband. The entire record was reviewed and considered in rendering this decision on appeal.

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

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 in pertinent part:

Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) of this section 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

The record indicates that the applicant entered the United States in May, 1997, by presenting a Permanent Resident Card (Form I-551) of another individual. The applicant returned to Mexico in November, 1997. On March 13, 2008, the applicant again presented a Form I-551 of another individual in an attempt to enter the United States. The applicant's use of a Form I-551 of another

person to seek and to gain admission into the United States renders her inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

In order to obtain a section 212(i) hardship waiver, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme

hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED], is a 67-year-old native of Mexico and citizen of the United States. The applicant and her husband have been married for 12 years. The applicant’s spouse asserts that he is suffering extreme hardship as a result of the denial of the waiver.

Regarding the hardships of separation, the applicant’s spouse states that he suffers from diabetes and bad eyesight, and that he needs his wife by his side to help him with his diet and health. *See Notice of Appeal*. [REDACTED] also claims that it is a hardship to pay the rent and the bills and to support two households. *See Letter from [REDACTED]*, dated Jan. 22, 2006. The record reflects that [REDACTED] is employed as a landscaper, *see Form G-325, Biographic Information*, but there is no documentation regarding his income or the amount of his claimed expenses. Finally, [REDACTED] states that he risks losing his job if he takes time off to travel to Mexico to visit the applicant. *See Letter from [REDACTED]*, dated Aug. 12, 2006.

Although [REDACTED] claims that separation from the applicant has caused various hardships, the applicant has not demonstrated that such hardships are extreme. First, [REDACTED] has not presented any evidence documenting the existence of his medical conditions. Without evidence regarding the severity of his claimed illnesses, his prognosis, and his ability to care for himself, the AAO cannot conclude that separation causes extreme medical hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (noting relevance of significant health conditions and availability of medical care). Second, without evidence of [REDACTED] income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan*, 927 F.2d at 468. Finally, [REDACTED] has not presented any evidence or argument that relocation to Mexico would cause extreme hardship. *See, e.g., Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, and the financial impact of departure).

In sum, although the applicant’s spouse claims hardships based on family separation, the preponderance of the evidence does not demonstrate that the difficulties, considered in the

aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.