

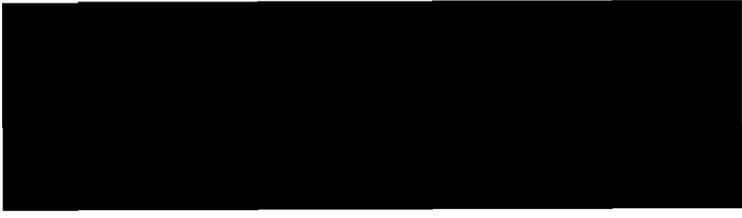
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



HS

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAY 03 2010
CDJ 2005 853 349

IN RE: 

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, 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 (Ciudad Juarez), Mexico 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen fiancé.

In a decision dated February 16, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen fiancé as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a letter dated March 3, 2007, the applicant's fiancé states that he is experiencing extreme hardship in having to travel to Mexico to see his family. He also states that he is suffering emotionally and financially.

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 reflects that on March 17, 2005 the applicant submitted fraudulent employment documents when she applied for a nonimmigrant visa. The AAO finds that this willful misrepresentation is material and thus the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

In *Kungys v. United States*, 485 US 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are "material" is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, i.e., to have has a natural tendency to affect agency decisions. In addition, in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) the BIA held that the elements of a material misrepresentation are as follows:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

Based on this standard, the applicant's misrepresentation was material. The applicant misrepresented her employer and/or employment status when applying for a nonimmigrant visa.

Section 101(a)(15) of the Act provides, in pertinent part, that:

The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens:

...
(B) An alien ...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

When an applicant applies for a nonimmigrant visa the consular officer must make material inquiries into whether the applicant is likely to abandon their foreign residence and reside in the United States. In determining the applicant’s intentions many different factors are considered, including if the applicant is employed in his or her home country. Thus, when the applicant misrepresented her employment she shut off a line of inquiry that was clearly, unequivocally, and convincingly capable of affecting the consular officer’s decision. Based on the foregoing, the AAO finds that the applicant did misrepresent a material fact and is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act.

Accordingly, the applicant is inadmissible under section 212(a)(6)(C) of the Act, but is eligible to apply for a waiver of this ground of inadmissibility under section 212(i) of the Act.

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 of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant’s U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant’s spouse and/or parent. 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 AAO notes that the qualifying relative in the applicant's case is her U.S. citizen fiancé.¹

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

¹ Under 22 C.F.R. § 41.81 applicants who are fiancés to U.S. citizens are treated as if they are applying for an immigrant visa and not a nonimmigrant visa, thus, making their U.S. citizen fiancé a qualifying relative and the equivalent of a U.S. citizen spouse.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes two statements from the applicant's fiancé, financial documentation, and a statement written in the Spanish language from a [REDACTED]. The AAO notes that because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In a statement dated April 6, 2006, the applicant's fiancé states that he is very close to the applicant's children and that he travels by car and plane many times a year to see them. He states that he speaks to the children two times a day and that their school principal stated that the children are stressed when he is not at the home. The applicant's fiancé also states that one of the most important hardship factors for their family is that where they live in Mexico is very dangerous and violent. He states that the applicant was robbed and assaulted near their home and that he had to hire a driver to take the children to and from school.

In a letter dated March 3, 2007, the applicant's fiancé states that he is experiencing extreme hardship. He states that he is risking his safety by flying to Mexico and also by driving thirty hours to see his fiancé and her children. He states that he is also struggling financially and emotionally.

The AAO notes that the record contains six statements of monthly expenses of the applicant's fiancé as well as a bank statement.

The AAO notes that the record of hardship places an emphasis on hardship to the children, but as stated above, hardship to the applicant's children even if these children were U.S. citizens, is not considered in section 212(i) waiver proceedings unless it is shown that hardship to the children is causing extreme hardship to the applicant's U.S. citizen fiancé.

The AAO also notes that the applicant's fiancé has not submitted documentation to support his claims of hardship. The applicant's fiancé states that where the applicant is living is dangerous, but does not submit any country condition information to support this claim. The AAO recognizes that parts of Mexico, especially areas near the U.S.-Mexico border are experiencing violent conflict between drug cartels and Mexican security services. However, the record does not indicate where in Mexico the applicant is currently residing; thus, the AAO cannot make a determination as to the conditions facing the applicant's fiancé upon relocation. The applicant's fiancé also states that he is suffering emotionally and financially, but does not provide any details or documentation to support these statements. The applicant's fiancé did submit financial documentation, but the documents submitted do not provide a full picture of the applicant's fiancé's monthly income and expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *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)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé 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.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.