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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

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MAY 03 2010

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

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 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 Director, California Service Center 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 lawful permanent resident¹ and 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 spouse.

The 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 Director*, dated August 14, 2007.

On appeal, the applicant contends that she and her spouse would suffer extreme hardship if her waiver application were denied. *Form I-290B, Notice of Appeal or Motion*.

In support of the waiver, the record includes but is not limited to, a medical letter for the applicant's spouse; a medical letter for the applicant; a statement from the applicant's pastor; an employment letter for the applicant's spouse; statements from the applicant; and a court record. 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 of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

¹ The Director indicated that the record did not establish the applicant's spouse as a lawful permanent resident. However, the record includes an approval notice for the Petition for Alien Relative (Form I-130) filed by the applicant's spouse on behalf of the applicant, which the AAO finds sufficient to establish the applicant's spouse as a qualifying relative for the purposes of this proceeding. The AAO notes that the alien number listed for the applicant's spouse on the approval notice, [REDACTED], is incorrect; the correct alien number is [REDACTED].

Although the applicant asserts that she did not at any time claim to be a United States citizen when she sought entry to the United States on September 22, 1991 at the port of entry in Hidalgo, Texas, the record contains a 1991 sworn statement from the applicant that establishes otherwise. *Form I-263B, Record of Sworn Statement*, dated September 22, 1991. In her statement the applicant acknowledged that, at the time of her primary inspection, she had claimed United States citizenship. *Id.*; *Form G-329, Documented False Claim to Citizenship*. It was not until she was referred to secondary inspection that the applicant admitted she was a Mexican national and not a United States citizen. *G-329*. As such, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact.

The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the opportunity to apply for a waiver under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

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 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. 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 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 joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. 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 or how his language abilities, or lack thereof, would affect his adjustment to Mexico. The applicant asserts that her spouse cannot leave his job in the United States because it is their primary means of support. *Form I-290B; Statement from the applicant's spouse*, undated. 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 applicant also states that she is currently under the care of a medical doctor for a tumor on her hypothalamus and depends on the medical insurance coverage provided through her spouse's employment. *Form I-290B*. She asserts that, without insurance, her treatment and medication would financially devastate her spouse if they were to live in Mexico. *Id.* The applicant also indicates that her spouse has a heart condition that requires constant monitoring and care. *Id.* The record includes statements from the physician treating the applicant and her spouse that establish that the applicant is seen regularly for a pituitary adenoma, hyperglycemia and hypercholesterolemia and that her spouse has congestive heart failure, dermatitis, an enlarged prostate, and requires ongoing treatment for cellulites. *Statements from [REDACTED]*, dated September 5 and 7, 2007. While the AAO acknowledges the documented medical conditions of the applicant and her spouse, it notes that the applicant is not a qualifying relative for the purposes of this proceeding and that the record fails to provide documentary evidence that she is currently dependent on medical insurance provided through her spouse's employment or that her spouse would be financially devastated by the cost of her medical treatment in Mexico. The AAO further observes that the record also fails to document, through published country conditions reports, that the applicant's spouse would be unable to receive adequate treatment for his own medical conditions 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)).

The AAO notes that the applicant also asserts that her spouse, a lawful permanent resident, has lived and worked in the United States for a great part of his life. She states that if he moved with her to live permanently in Mexico, he would lose his status in the United States. The AAO acknowledges the applicant's claim that her spouse could face the loss of his lawful permanent resident status if he relocated to Mexico. It finds that, when considered in the aggregate, the potential loss of the applicant's spouse's permanent residency in the United States, his health conditions and the normal hardships associated with relocation establish that the applicant's spouse would suffer extreme hardship if he were to reside with the applicant 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 record does not address what familial ties the applicant's spouse may have to the United States. The record does not address whether being separated from the applicant would financially affect the applicant's spouse. The record does not include documentation, such as mortgage/bill statements, utility bills, or credit card statements, regarding the expenses of the applicant's spouse, nor does the record include earnings statements, W-2 forms, or

tax statements for the applicant's spouse showing his annual salary. As previously noted, the record includes medical statements for the applicant and her spouse that establish that the applicant suffers from pituitary adenoma, hyperglycemia and hypercholesterolemia, and her spouse from congestive heart failure, dermatitis, an enlarged prostate and cellulites that require periodic treatment. *Statements from* [REDACTED], dated September 5 and 7, 2007. It does not, however, indicate that the applicant's spouse's health problems make him dependent on the applicant or that she plays a role in his health care. Neither does the record establish that the applicant's spouse would suffer mental/emotional hardship as a result of his concern over the applicant's health in Mexico.

The applicant states that she is everything for her spouse as he is for her. 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.

In that the record does not establish extreme hardship to the applicant's spouse if he resides in the United States, the applicant has not demonstrated extreme hardship to a qualifying relative under section 212(i) of the Act. 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) 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.