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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: MAR 19 2003

IN RE: Applicant: [redacted]

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, 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 procured admission into the United States in February 1999, by presenting fraudulent documents in another person's name. The applicant is therefore 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). The applicant married a native and citizen of Mexico on October 10, 1999 in Tizapan, Jalisco, Mexico. The applicant's spouse became a naturalized U.S. citizen on June 6, 2000, and the applicant is the beneficiary of an approved petition for alien relative. She seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied her application accordingly. On appeal the applicant submits affidavits from herself, her U.S. citizen husband [redacted] and several of his family members stating that [redacted] will remain in the United States (U.S.) if the applicant is removed to Mexico, that his child would return to Mexico with the applicant, and that [redacted] would suffer emotionally and physically if the applicant is forced to return to Mexico.

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 may, in the discretion of the Attorney General, 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 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.

> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed 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 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. *See Cervantes-Gonzalez* at 565-566.

The applicant asserts that [redacted] will suffer emotional, physical and financial hardship if she is forced to return to Mexico. Specifically, the applicant states that [redacted] would be separated from his wife and child and that the separation would cause him to suffer anxiety and depression. The applicant additionally argues that [redacted] needs surgery on his ankle and that he would suffer physical hardship without the applicant's assistance during his recovery period. The applicant also asserts that [redacted] would suffer financial hardship in that he would need to maintain two households if the applicant returned to Mexico with their child.

The applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship based on the factors set forth in *Cervantes-Gonzales, supra*. The claim that [redacted] may suffer from depression is not medically documented and lacks detail. Moreover, although [redacted] may undergo surgery on his ankle, the surgery is elective and the applicant has failed to establish that [redacted] suffers from a serious or debilitating illness which would cause hardship if the applicant were not present. Additionally, the record reflects that [redacted] is a native of Mexico, that he met the applicant in his hometown of Tizapan el Alto, Jalisco, and that he visited the applicant in Mexico on a monthly basis prior to marrying her there in 1998. Although [redacted] was a legal permanent resident at the time he married the applicant, he was not yet a U.S. citizen. Thus, [redacted] expectations of legally living together with his wife in the U.S. must realistically have taken into account the possibility of a separation of many years.

In *Cervantes-Gonzalez* the BIA cited *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970) (citations omitted), stating that:

> [E]ven assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States. *Cervantes-Gonzalez* at 567.

Moreover, in *Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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. The U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.