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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: APR 19 2004

IN RE: [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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 naturalized citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her spouse and U.S. citizen children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated August 4, 2000.

On appeal, counsel contends that the applicant has established extreme hardship to her spouse and three U.S. citizen children. *See* Form I-290B, dated August 31, 2000.

In support of these assertions, counsel submits a letter from the applicant, dated April 20, 1999; copies of the U.S. birth certificates of the applicant's children; a letter verifying the employment of the applicant's husband, dated August 10, 1999; letters from two of the applicant's children; a letter from the applicant's spouse, dated September 4, 1999; a psychological evaluation of the applicant, dated August 10, 1999; copies of documents evidencing the scholastic achievement of the applicant's daughters; a copy of the naturalization certificate of the applicant's spouse and a document attesting to the clean criminal record of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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:

> (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 record reflects that the applicant attempted to procure entry into the United States during March 1990 using an Alien Resident Card that belonged to another person. On March 28, 1990, the applicant pled guilty to a violation of 8 U.S.C. § 1325 and was imprisoned for a period of 45 days.

Counsel states that the applicant committed a crime involving moral turpitude (CIMT) under section 212(a)(2)(A)(i) of the Act rendering her inadmissible to the United States. *See* Statement in Support of I-601 Application, dated September 7, 1999. The AAO notes that the decision of the district director quoted waiver provisions pursuant to section 212(h) of the Act, but the district director based his decision on the applicant's violation of section 212(a)(6)(C) of the Act. *See* Decision of the District Director. Section 212(h) of the Act corresponds with violations under section 212(a)(2)(A)(i) of the Act. Waiver provisions for violations of section 212(a)(6)(C)(i) of the Act, however, are provided at section 212(i) of the Act as quoted *infra.* Congress specifically limited waivers of inadmissibility under section 212(i) to situations in which the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant while waivers of inadmissibility under section 212(h) are available in situations in which the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent *or child* of the applicant. As section 212(i) waiver provisions are more limiting and as the applicant has committed an act in violation of section 212(a)(6)(C)(i), the AAO evaluates the applicant's waiver request pursuant to section 212(i) of the Act.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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).

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 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.

Counsel asserts that the applicant's husband would face extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel contends that the applicant's spouse would be forced to uproot his family, removing his children from their schooling to face uncertain educational prospects in Mexico. *See* Statement in Support of I-601 Application, dated September 7, 1999. Counsel further contends that the applicant's spouse would not have employment opportunities in Mexico comparable to the employment he undertakes in the United States. *Id.*at 3.

Counsel does not establish extreme hardship to the applicant's husband, however, if he remains in the United States maintaining his employment and educational opportunities for his children. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's spouse will undergo financial hardship if separated from the applicant. Counsel indicates that the applicant's spouse is not offered medical coverage through his employment. *Id.* at 4. The AAO notes that counsel also states that the applicant's employment does not provide medical insurance. *Id.* (stating "Rebeca ... until recently provided health insurance through her job.") The record does not establish that the applicant's spouse will be unable to

support himself and their children financially in the absence of the applicant. The record does not demonstrate that the applicant's employment offers medical coverage for her family or that the family has no means of obtaining medical insurance in the absence of the applicant. Counsel indicates that the applicant's spouse will be forced to provide caretakers for his children in the absence of the applicant. The record does not establish that childcare costs would impose an extreme hardship on the applicant's spouse. Moreover, the AAO notes that 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.

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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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