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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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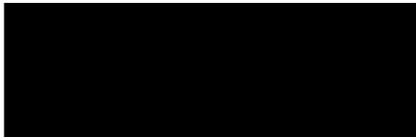
FILE [Redacted] Office: SAN FRANCISCO, CA

Date: MAY 15 2001

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



Public Copy

identification data deleted to prevent clearly unwanted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, San Francisco, California, and an appeal of that decision was dismissed by the Associate Commissioner for Examinations. Subsequently, the Associate Commissioner granted a motion to reopen the matter and affirmed the order dismissing the appeal. The matter is now before the Associate Commissioner on a second motion to reopen. The motion will be granted and the order dismissing the appeal will be reaffirmed. The application will be denied.

The applicant is a native and citizen of Mexico who is inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1997. The applicant married a naturalized citizen of the United States in January 1997. She is the beneficiary of an approved petition for alien relative and seeks the above waiver in order to remain in the United States and reside with her spouse and child.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal and on first motion.

On appeal and on first motion, the applicant was self-represented. The applicant's spouse stated that he would suffer extreme financial hardship due to the significant number of trips he would have to make to Mexico to see his wife and daughter, that he would lose time from his job, and that he would possibly lose his house from not making payments.

On second motion, counsel submits an expanded statement from the applicant's spouse; letters of support on behalf of the applicant and her spouse from friends, relatives and business associates; a copy of the birth certificate of the couple's only child; documents relating to the spouse's business and home ownership; various documents concerning country conditions in Mexico; and a letter from a licensed psychologist concerning the mental and physical well-being of the spouse. Counsel asserts that the new evidence presented, when considered in the aggregate, clearly demonstrates extreme hardship to the applicant's spouse if the applicant is not permitted to reside in the United States. Counsel also asserts that the balance of discretionary factors weighs heavily in favor of granting the applicant's waiver request.

The record reflects that the applicant used a false alien registration card to procure admission into the United States in 1997.



Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-  
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

\* \* \*

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

\* \* \*

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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 states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(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).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory

direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

In 1990, § 274C of the Act, 8 U.S.C. 1324c, was inserted by the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5059), effective for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) provided penalties for document fraud stating that "[i]t is unlawful for any person or entity knowingly-... (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act,...."

In 1994 Congress passed the Violent Crime Control and Law Enforcement Act (P.L. 103-322, September 13, 1994), which enhanced the criminal penalties of certain offenses, including 18 U.S.C. 1546:

(a) ...Impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name...knowingly making false statement under oath about material fact in immigration application or document....

(b) Knowingly using false or unlawfully issued document or false attestation to satisfy the Act provision on verifying whether employee is authorized to work.

The penalty for a violation under (a) increased from up to five years imprisonment or a fine, or both, to up to ten years imprisonment or a fine, or both. The penalty for a violation under (b) increased from up to two years imprisonment or a fine, or both, to up to five years imprisonment or a fine, or both.

In 1996, Congress expanded the document fraud liability to those who engage in document fraud for the purpose of obtaining a benefit under the Act. Congress also restricted § 212(i) of the Act in a number of ways with the recent IIRIRA amendments. First, immigrants who are parents of U.S. citizen or lawful permanent resident children can no longer apply for this waiver. Second, the immigrant must now show that refusing him or her admission would cause extreme hardship to the qualifying relative. Third, Congress eliminated the alternative 10-year provision for immigrants who

failed to have qualifying relatives. Fourth, Congress eliminated judicial review of § 212(i) waiver decisions. And fifth, a child is no longer a qualifying relative.

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, and the re-inclusion of the perpetual bar, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In Matter of Cervantes-Gonzalez, supra, the Board held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion. Matter of Tijam, Interim Decision 3372 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in Matter of Alonso, 17 I&N Dec. 292 (Comm. 1979), and noted that the United States Supreme Court ruled in INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996), that the Attorney General has the authority to consider any and all negative factors, including the respondent's initial fraud.

Both the acting district director and counsel have cited case law relating to the issue of "extreme hardship" as that term is applied in matters involving suspension of deportation under § 244 of the Act, 8 U.S.C. 1254, prior to its amendment by IIRIRA, recodification under § 240A of the Act, 8 U.S.C. 1230A, and

redesignation as "cancellation of removal." Matter of Piltch, 21 I&N Dec. 627 (BIA 1996); Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

In Matter of Marin, 16 I&N Dec. 581 (BIA 1978), the Board stated that, for the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. See also Matter of Mendez, supra. In those matters, the alien was seeking relief from removal. In the matter at hand, the alien is seeking relief from inadmissibility. It is more suitable to use case law references relating to the application of the term "extreme hardship" as found in case law relating to waivers of grounds inadmissibility under § 212(h) of the Act than in case law relating to cancellation of removal.

The Associate Commissioner does not suggest that the term "extreme hardship" has two different meanings. However, application of that term in what was formerly called exclusion and deportation proceedings is different. In the former exclusion proceedings the burden of proof was on the alien. In the former deportation proceedings, the burden of proof was on the government. Under the IIRIRA amendments the process is basically the same. The alien must prove admissibility, and the government must prove deportability. Hypothetically, some aliens who are ineligible for a § 212(i) waiver due to fewer qualifying elements, may be able to establish their eligibility in subsequent cancellation of removal proceedings, which would lessen the impact of a denial of such waiver.

The record reflects that the applicant and her spouse are both natives of Mexico. The applicant's spouse became a naturalized citizen of the United States in 1996, recently established a business with his uncle in Napa, California, and has numerous relatives living in the area. The applicant and her spouse have one child. Counsel asserts that if the applicant is forced to return to Mexico, her spouse will be faced with an "impossible choice." If he accompanies his wife and daughter to Mexico, he will be forced to give up his home, his close relationship with the rest of his family, and his business. He worries that his parents and sisters will have no place to live and that the business, left in the hands of his uncle, will suffer. Counsel also asserts that country conditions are such that the applicant's spouse would be unable to support his family in Mexico and that educational opportunities for his daughter and access to medical care would be limited.

Counsel states that the applicant's spouse has not ruled out the possibility that he would remain in the United States if his wife must relocate to Mexico. However, the spouse states that it would break his heart to be away from them and he may not be able to bear it. In support of the second motion, counsel submits a psychologist's letter dated June 19, 2000, indicating that the

applicant's spouse was interviewed to discuss his wife's possible deportation. The psychologist states that the applicant is deeply distraught over the possibility of being forced to choose between his wife returning to Mexico alone or giving up his home and business to relocate with her. No evidence or documentation to establish that the applicant's spouse has long-standing medical problems which are rare, life-threatening or require medication and therapy has been submitted.

There are, however, no laws that require the applicant's United States citizen spouse and daughter to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even 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."

A review of the documentation in the record, when considered in its totality, reflects that the applicant's spouse would suffer hardship due to separation if his wife is removed from the United States. The applicant has failed, however, to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Hardship to the applicant's child is not a consideration in § 212(i) proceedings. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether or not she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the decisions dismissing the appeal will be reaffirmed. The application will be denied.

**ORDER:** The Associate Commissioner's orders of June 17, 1999 and May 24, 2000 are reaffirmed. The application is denied.