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U.S. Department of Justice  
Immigration and Naturalization Service

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

[REDACTED]

File: [REDACTED] Office: SAN FRANCISCO, CA Date: 12 MAR 2002

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), and under Section 212(a)(9)(B)(v) of the Act,  
8 U.S.C. 1182(a)(9)(B)(v)

IN BEHALF OF APPLICANT:  
[REDACTED]

Public Copy

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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

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 procured admission into the United States by fraud or willful misrepresentation; and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. In January 1995, the applicant married a lawful permanent resident of the United States who subsequently naturalized as a United States citizen in November 1998. The applicant 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 children.

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

On motion, counsel submits documentation including a brief; country conditions reports on Mexico; declarations from the applicant, her spouse, and a family friend; a letter from the spouse's employer; and evidence that the family has health insurance. Counsel argues that the applicant's spouse will suffer extreme hardship both if he remains in the United States without his wife or if he relocates his family to Mexico. Counsel asserts that the spouse will be unable to support his family if they remain in the United States without the applicant because he will be unable to work at his current employment while simultaneously caring for his young children. In addition, counsel asserts that the spouse is emotionally distraught at the prospect of being forced to relocate to Mexico because he will be unable to support his family due to the lack of employment opportunities in that country.

The record reflects that the applicant was found to be inadmissible to the United States under section 212(a)(6)(C) of the Act for having procured admission into the United States in March 1995 through presentation of an alien registration card belonging to another person. She was also found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having remained in unlawful status for a period of one year or more. On April 1, 1997, the date the calculation for unlawful presence begins, until her departure from the United States in March 1999. The applicant returned to the United States in March 1999.



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.

\* \* \*

(9) ALIENS PREVIOUSLY REMOVED.-

\* \* \*

(B) ALIENS UNLAWFULLY PRESENT.-

(i) IN GENERAL.-Any alien (other than an alien lawfully admitted for permanent residence) who-

\* \* \*

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

\* \* \*

(v) WAIVER.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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).

After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground inadmissibility for unlawful presence (entry without inspection) after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

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 a qualifying family member. Although extreme hardship is a requirement for section 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).

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of

1996 (IIRIRA). The requirements to establish extreme hardship in section 212(a)(9)(B)(v) waiver proceedings do not include a showing of hardship to the alien, as did former cases involving suspension of deportation, and are identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under section 212(i) of the Act.

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) 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 Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The 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. The record reflects that the applicant's spouse, also a native of Mexico, became a lawful permanent resident in 1993 and naturalized as a United States citizen in 1998. He and the applicant have been married since 1995 and have two young children born in the United States. The spouse is employed as a construction worker earning \$24.00 per hour for a 40-hour work week, in addition to overtime. The spouse's employment benefits include life and health insurance coverage for his family. The applicant is not employed and has responsibility for caring for the couple's children.

The applicant's spouse states that the couple's children would suffer terribly if the applicant were forced to leave the United States. He states that he would not be able to afford a full-time care-giver for the children and that he would suffer severe emotional distress and extreme anxiety regarding the applicant's safety and health in Mexico. In addition, the spouse is concerned about the lack of educational opportunities and medical care for his children in Mexico. He worries about his children's future if they were compelled to relocate to Mexico with the applicant.

There are no laws that require the applicant's spouse and children 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, fails to establish that the applicant's spouse (the only 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 children is not a consideration in these proceedings. 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) and section 212(9)(B)(v) 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 order dismissing the appeal will be affirmed. The application will be denied.

**ORDER:** The Associate Commissioner's order dated November 15, 2000 dismissing the appeal is affirmed. The application is denied.