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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

FILE: [Redacted]

Office: PORTLAND, OR

Date:

APR 08 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:
[Redacted]

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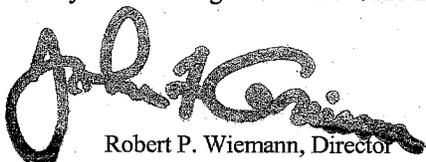
INSTRUCTIONS:

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, Portland, Oregon, 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 made a material and willful misrepresentation at the time of his last entry into the United States. The record reflects that the applicant falsely claimed birth in the United States at the San Diego port of entry on August 29, 1986. As a result, the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of the ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision, the district director referred to a July 2002 affidavit submitted by the applicant's spouse [REDACTED]. The affidavit stated that [REDACTED] would suffer extreme hardship if the applicant were removed from the United States (U.S.) because he is the primary provider for the family and she depends on him to help teach and raise their children. [REDACTED] additionally stated that she and her children would not be able to maintain the lifestyle they were accustomed to if the applicant were removed from the U.S. and that this would change their lives dramatically. See *District Director Decision*, dated October 23, 2002. The district director noted that, although [REDACTED] indicated that her husband was the primary economic provider, no evidence was submitted to support the assertion. The district director then addressed the effects of hardship when a spouse is removed from the U.S. and concluded that, based on the evidence in the record, the applicant had failed to establish that his wife would suffer extreme hardship if he were removed to Mexico.

On appeal, the applicant, through an accredited representative, asserts that the district director ignored and distorted pertinent facts and issues in his case. The applicant further asserts that his case should be analyzed according to immigration law as it existed in 1986 and that the district director violated his due process rights by not asking for more evidence regarding hardship. In addition, the applicant submitted another affidavit from his wife, dated November 7, 2002, stating that she has worked as a teacher's assistant for nine years and that she is currently attending community college to better her life. The affidavit states that [REDACTED] would not be able to attend school if she moved to Mexico and that she

would likely be unemployed due to the poor economy. She states further that the family would lose their house if they moved to Mexico, and that her children would lose opportunities and suffer emotional hardship. The applicant also submitted copies of birth certificates for his children, an affidavit from the deacon of his church and two general internet articles on education and the economy in 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).

The applicant's assertion that his case should be adjudicated according to the law as it existed in 1986 is unpersuasive. 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 section 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. Here, Congress' desire to limit rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. Amongst other things, the IIRARA amendments to the Act include the narrowing of parameters for eligibility for relief, the re-inclusion of a perpetual bar in certain cases, and the elimination of children as a consideration in determining

the presence of extreme hardship. It is thus concluded that Congress has placed a high priority on stopping fraud and misrepresentation related to immigration and the applicant's eligibility for relief will be determined under the Act as it exists currently.

The applicant's assertion that his due process rights were violated is equally unpersuasive. The burden of proving eligibility remains entirely with the applicant in waiver of grounds of inadmissibility proceedings. See section 291 of the Act, 8 U.S.C. § 1361.

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 by the applicant that the bar imposes an extreme hardship on a qualifying family member.

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 had established extreme hardship pursuant to section 212(i) of the Act. The factors included 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.

In this case, the applicant's qualifying relative is his U.S. citizen wife. The record indicates that [REDACTED] is healthy and that she is a native of Mexico. The record indicates further that [REDACTED] will remain with her two children whether she moves to Mexico or stays in the U.S. The record is silent regarding any other family ties [REDACTED] has inside or outside of the U.S. The applicant asserts that he is the primary provider for his family and that his wife depends on him to raise and guide their children. It is noted, however, that the applicant's wife has worked as a teacher's assistant for nine years. Moreover, no evidence was submitted regarding the applicant's income or regarding his contributions to the family and household. The applicant additionally failed to establish how the information contained in the submitted internet articles pertains to him, or that the articles establish the existence of conditions in Mexico that would support a finding of extreme hardship.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court stated further that the common results of deportation are insufficient to prove extreme hardship. In *Matter of Pilch*, 21 I&N Dec. 627, (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation. Moreover, 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his 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.