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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

Identifying data deleted to prevent identity unwarranted

FILE [Redacted]

Office: DENVER, CO

Date:

DEC 18 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]

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 Citizenship and Immigration Services (CIS) 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 Acting District Director, Denver, Colorado, 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 by a consular officer on June 24, 1994 for attempting to procure admission into the United States by fraud or willful misrepresentation under 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 subsequently entered the United States without being inspected, paroled or admitted by an immigration officer. Thereafter, the applicant married a U.S. citizen.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the application accordingly.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] did not indicate the factors considered in weighing the equities to determine adjudication of the Application for Waiver of Grounds of Excludability (Form I-601). Further, counsel states that CIS improperly considered the applicant's illegal employment in the United States as a benefit under the Act and that misrepresentation of a material fact has not been established. Counsel submits a brief supporting these assertions.

The record also includes an affidavit of the applicant, dated October 23, 2002 and documents evidencing an alias used by the applicant in engaging in employment. The entire record was considered in rendering this decision.

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

¹ The AAO notes that the record does not contain verification of the citizenship of the applicant's spouse.

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.

While counsel contends that the applicant did not misrepresent a material fact in applying for a visa, disclosure of employment is a patent part of the visa application and inspection processes. A visa was not issued to the applicant based on her use of fraudulent documentation rendering her misrepresentation material. See 8 U.S.C. § 1201(g).

The decision of the acting district director finds that in addition to the applicant's willful misrepresentation before a consular officer in 1994, the applicant used a false name and fraudulent Social Security card in obtaining employment. The AAO finds that presenting a false Social Security card and alien registration card in order to gain employment from a private employer does not render the applicant inadmissible because employment is not a "benefit provided under this Act" for purposes of section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act because she made false statements and/or presented fraudulent documentation to an immigration or government official in order to obtain a visa from the U.S. Consulate in Juarez, Mexico not because she used fraudulent documentation to obtain employment. See *Matter of L-L-*, 9 I&N Dec.324 (1961).

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 U.S. 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. It is further noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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.

Counsel asserts that the applicant has established extreme hardship to her family in the event that she is removed from the United States. See *Appeal from Denial of I-601 Application submitted by Jason Takaki* at 8. The affidavit of the applicant states that she provides for her father who is unable to work. The record does not establish that the applicant cannot continue to provide for her father financially from a location outside of the United States. The record does not establish that the applicant is the only person who can provide care to her father and it does not demonstrate the type or extent of care that her father requires for his medical condition. Beyond indicating that she is married to a U.S. citizen and is the mother of a U.S. citizen child, the applicant makes no statements regarding hardship to her U.S. citizen spouse resulting from her inadmissibility. The record does not establish extreme hardship to the applicant's U.S. citizen or legally permanent resident spouse and/or parent.

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.

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