



U.S. Department of Justice

Immigration and Naturalization Service



PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



**identifying cases to
prevent clearly unwarranted
invasion of personal privacy**

File: [Redacted] Office: SAN FRANCISCO, CA

Date: **JAN 14 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)

IN 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 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 that 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 is now before the Associate Commissioner for Examinations 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is the son of a United States citizen father and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse and 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 accordingly.

On appeal, counsel asserts that the district director failed to consider that the applicant's father has degenerative arthritis and hypertension and is of advanced age and in poor health, and that the district director's failure to consider these factors is a serious injustice to the concept of hardship to the applicant's father. Counsel also asserts that the economic and social disruptions that the applicant's father would suffer in the event that the applicant is removed from the United States are above and beyond the normal consequences involved in the removal of a family member. Counsel concludes that the applicant warrants a waiver of inadmissibility in the exercise of discretion.

The record reflects that the applicant obtained admission into the United States in 1979 by presenting a fraudulent United States birth certificate.

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 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. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

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).

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).

In Matter of Cervantes-Gonzalez, supra, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 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.

On appeal, counsel submits a brief and medical documentation concerning the applicant's father. The record reflects that the applicant's father was born in the United States in 1921 and suffers from hypertension and osteoarthritis, largely confined to his left knee. While counsel asserts that the father has continuously resided in the United States since approximately 1946, the medical documentation submitted, dated March 10, 2000, indicates that he "recently immigrated [to the United States] from Mexico."

Counsel states that given the father's advanced age, he does not consider relocation to Mexico a viable option psychologically, emotionally, physically, or financially. It is noted, however, that there are no laws that require the applicant's father to leave the United States and live abroad. 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. 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).

On appeal, counsel asserts that the father presently resides with the applicant and that if the applicant were removed from the United States and his father does not accompany him to Mexico, the father would be left without physical or financial support. However, counsel also indicates that all of the father's adult children reside in the United States, that he lives in the various homes of his adult children, and relies completely upon the financial support of the applicant and his other adult children. The record reflects that one of those children, a naturalized United States citizen daughter named Dora Maria Rodriguez Meza, lives in California. The record, however, contains no additional information regarding the names, immigration status, or specific

locations of the other children.

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. Furthermore, the assertion of financial hardship to the applicant's father advanced in the record is contradicted by the fact that, in the instant case, Dora Maria Rodriguez Mesa (the applicant's sister) filed an affidavit of support in the applicant's behalf. The statute and the regulations do not provide for an alien beneficiary (the applicant) to execute an affidavit of support in behalf of a petitioner (the applicant's U.S. citizen father). A claim that an alien beneficiary is needed for the purpose of supporting a citizen petitioner can only be considered as a hardship in rare instances.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his father would suffer extreme hardship over and above the normal 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 he 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 Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.