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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: LOS ANGELES, CA

Date: **JAN 31 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, Los Angeles, 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 sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident of the United States and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to remain in the United States and reside with her spouse.

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. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel submitted a brief arguing that the district director erred as a matter of law by applying an erroneous legal standard and failed to cite the proper applicable case law in order to impartially adjudicate the applicant's waiver request. Counsel asserted that the length of the couple's marriage and plans for expanding their family through fertility treatments and/or adoption were simply not considered as evidence of extreme hardship and that the particulars of this case, taken individually and weighed cumulatively, support a finding of extreme hardship.

On motion, counsel submits a brief asserting that the Associate Commissioner's dismissal of the applicant's appeal was rendered in error and that the applicant thus warrants a favorable determination of her motion to reconsider. Counsel further asserts that the Associate Commissioner failed to properly consider and weigh all of the evidence presented to establish extreme hardship to the applicant's spouse in the event the applicant is removed from the United States. Counsel states that one of the central purposes of a waiver is to provide for unification of families and that a relevant body of case law and the fundamental purpose was ignored in the Associate Commissioner's analysis of extreme hardship.

The record reflects that the applicant sought to procure admission into the United States on October 23, 1988 at San Ysidro, California by using another person's documentation. She was denied admission and turned over to Mexican immigration officials. Shortly thereafter, she obtained entry without inspection and, in 1996, filed an application for adjustment of status to permanent residence.

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.

The record reflects that the applicant and her spouse, also a native of Mexico, are currently thirty-five and thirty-four years of age and were married in Mexico in 1987. In 1988, the applicant's spouse obtained lawful residence in the United States. Both the applicant and her spouse were employed full-time as of the date the applicant applied for adjustment of status to permanent residence in April 1996.

The record contains a declaration from the applicant's spouse, dated September 29, 1997, stating that he and the applicant had been dating since he was fourteen years-old and have not been separated since their marriage; he is unable to father a child and the couple have plans to adopt once they have their own home; and he would be emotionally and psychologically devastated if separated from the applicant. He further states that his plans for the future are dependent upon the applicant being by his side; unemployment is high and the economic conditions are bad in Mexico; he needs the applicant for moral, physical, and emotional support; and all of his dreams would be destroyed if the applicant were removed from the United States.

There is no information contained in the record as to the extent of the spouse's family ties outside of the United States. There is also no indication in the record that the applicant's spouse has any significant condition of health for which treatment would be unavailable in Mexico.

On motion, counsel asserts that the applicant's spouse has spent all of his adult life in the United States and does not have any relatives in the United States other than the applicant; suffers from a low sperm count and cannot father children; has an established career in the United States as a baker and does not believe he could establish a career in Mexico; and would have to abandon his status as a lawful permanent resident in the United States if he accompanies the applicant to Mexico. Counsel further asserts that the couple has a special and extraordinary relationship; have know each other for nearly half their lives; have been married for over fifteen years; and have a deep and genuine commitment to one another.

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 common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991).

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.

Further, it is noted that there are no laws that require the applicant's spouse to leave the United States and live abroad. 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 qualifying relative would experience hardship due to separation from his spouse. However, the applicant has failed to show that her spouse 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 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 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 June 13, 2002 is affirmed. The application is denied.

OFFICE OF THE
ASSOCIATE COMMISSIONER
OF IMMIGRATION AND
NATURALIZATION SERVICE
WASHINGTON, D.C.