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**JAN 21 2004**

FILE: \_\_\_\_\_ Office: SAN ANTONIO, TX Date:

IN RE: \_\_\_\_\_

PETITION: 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 PETITIONER:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiernann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Antonio, Texas. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

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 attempted to procure admission into the United States by fraud or willful misrepresentation in 1977. The applicant is the beneficiary of an approved Petition for Alien relative filed by his U.S. citizen daughter. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his wife, a legal permanent resident, and thirteen children.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The decision was affirmed by the AAO on appeal. See AAO Decision, dated January 8, 2003.

In the present motion to reopen/reconsider, filed February 10, 2003, counsel asserts that the applicant's spouse will suffer extreme hardship if the waiver is not granted. In support of this assertion, counsel submits an affidavit of the applicant's wife and a letter from the physician treating the applicant's wife. Counsel also submits a copy of a sustained AAO decision dated September 5, 2000 in which a section 212(i) waiver was granted to an applicant who falsified his academic credentials. Counsel includes a copy of a photograph of the applicant, his wife and their 13 children; a copy of the permanent resident card issued to the applicant's wife; an affidavit of the applicant's daughter, dated August 15, 2002 and four letters of support from children and spouses of children of the applicant.

The record also contains a statement from the applicant, dated August 14, 2001; a copy of the Order of Judicial Recommendation Against Deportation, dated November 20, 1990; copies of United States District Court for the Western District of Texas documents and related filings pertaining to the applicant and copies of the Mexican birth and baptismal certificates for the applicant.

The record indicates that on January 3, 1991, the applicant was convicted of the offense of representing himself to be a citizen of the United States based on his submission of a passport application on or about August 6, 1985. The applicant was sentenced to two years of probation and ordered to pay a fine. On November 20, 1990, the applicant's Motion for a Judicial Recommendation Against Deportation pursuant to section 241(b)(2) of the Act, 8 U.S.C. § 1251(b)(2), was granted.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel fails to provide evidence that was not available previously and could not have been discovered

during the prior proceedings under this application. Further, counsel fails to establish that the prior decision was based on an incorrect application of law or CIS policy. The AAO notes that case to which counsel refers on motion to reconsider is distinguishable from the application at hand. The decision dated September 5, 2000 found that the combined medical and emotional illnesses suffered by the qualifying relative waiting for the applicant to join him in the United States had caused health problems rising to the level of extreme hardship. Since extreme hardship was established in the September 5, 2000 decision, the AAO engaged in a weighing of the positive and negative factors present in the application in order to determine whether the Attorney General [now the Secretary of Homeland Security (Secretary)]'s discretion should be exercised. 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). Since the applicant failed to establish extreme hardship in the present application, the AAO did not reach the question of whether a waiver should be granted as a matter of discretion.

On motion to reopen/reconsider, the affidavit of the applicant's spouse states, "If he [the applicant] were to return to Mexico I don't know what I would do: on the one hand, I could go to Mexico...on the other hand, I could stay here in Austin...either way, the situation would naturally cause me...extreme hardship." See Affidavit of Porfiria Valadez, dated February 6, 2003. The record does not establish, beyond her own statements, that the applicant's spouse will suffer extreme hardship if she remains in the United States with her 13 adult children. The record does not establish that the applicant is the only person able to escort his wife, who is unable to drive, to her medical appointments and other destinations. The record does not establish that the osteoarthritis, hypertension and hypercholesterolemia from which the applicant's spouse suffers prevent her from accomplishing daily tasks or require constant care and attention. The letter from her treating physician simply states that the applicant's wife is treated with diet and prescription medication as well as periodic monitoring of her blood. See Letter of Emilio Gutierrez Jr., MD, dated January 30, 2003. The record does not establish that the applicant's wife could not receive adequate treatment for these ailments in Mexico.

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, 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 and does not constitute 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 was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. 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. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior opinion of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in his appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the district director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.