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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: JUL 23 2004

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 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. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact while attempting to procure admission into the United States on November 16, 1996. On November 20, 1996, an Immigration Judge ordered the applicant excluded from the United States pursuant to section 235(b)(1) of the Act and on the same day she was removed to Mexico. The record further reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen spouse. She 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 and reside with her U.S. citizen spouse and children.

The Interim District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Interim District Director Decision* dated June 27, 2003.

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 (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 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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that on November 16, 1996, the applicant attempted to procure admission into the United States by presenting a valid Mexican passport with a counterfeit I-551 stamp affixed to the passport. During her interview the applicant admitted that she paid \$200 to an unknown vendor

in Tijuana, Mexico for the fraudulent stamp and that her intention was to enter the United States in order to reside here.

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. 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).

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the 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.

On appeal, counsel states that Citizen and Immigration Services (CIS) failed to correctly assess extreme hardship to the applicant's spouse and children. In support of this assertion, counsel submitted a brief, an affidavit from a letter from the Mexican Consulate and the applicant's mother-in-law's medical records. In his brief counsel emphasizes the hardship to the applicant as set out in *Matter of O-J-O*, Interim Decision 3280 (BIA 1996) and in *Matter of Anderson*, Interim Decision 596, 597 (BIA 1978). Both *Matter of O-J-O* and *Matter of Anderson* dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

Counsel states that family ties are in the United States and that he does not have any family members in Mexico since he is a native of Ecuador. Counsel asserts that if the applicant's waiver application was denied might be forced to relocate to Mexico with the applicant. Furthermore, in the brief and in affidavit it is stated that would suffer emotionally and financially if his spouse's waiver application were not approved. also states that his life would be a disaster without the applicant. He asserts that he cannot relocate to Mexico since he is not a citizen of Mexico and would have to live there illegally or spend years attempting to immigrate legally. A letter from the Mexican Consulate states that the applicant's children would suffer hardship at school due to their limited knowledge of the Spanish language and that children in Mexico generally do not accept other children with accents. In addition, the letter states that would have to undergo a long and complicated process to obtain an immigrant visa in Mexico, his university degree would not be recognized and he would not be able to work until his immigration process in completed

There are no laws that require to leave the United States and live abroad. 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.” The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent 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).

Counsel and [REDACTED] state that if he decides to relocate with the applicant to Mexico his mother will suffer extreme hardship because she depends on [REDACTED] to provide financial support and to take her to doctors' appointments. [REDACTED] mother underwent breast cancer surgery, chemotherapy and radiation in 2001. The record reflects that [REDACTED] has siblings residing in the United States and no documentary evidence was provided to substantiate the claim that his mother cannot take care of herself and her daily chores or that another family member cannot provide for [REDACTED] mother. In any event, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child or mother-in-law. Counsel's assertions regarding the hardship the applicant's children and mother-in-law would suffer will thus not be considered.

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 (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. The U.S. Supreme Court additionally 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 her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. 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.