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**U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: JUN 7 2004

IN RE: [REDACTED]

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:

[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 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 falsely claiming to be a United States citizen in July 1977. On July 29, 1977, the applicant was removed from the United States. The applicant married a naturalized citizen of the United States in the United States in January 1993 and is the beneficiary of an approved Petition for Alien Relative (WAC-93-097-51097). 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 his spouse and U.S. citizen children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated May 16, 2003.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] used an incorrect standard of hardship in evaluating the evidence presented and in deciding the waiver. *Form I-290B*, dated June 7, 2003.

The record contains a color photograph of the applicant and his family; a copy of the marriage certificate for the applicant and his spouse; affidavits of support; a copy of the naturalization certificate of the applicant's spouse; a copy and translation of the Mexican birth certificate of the applicant; a copy of the photograph page of the Mexican passport of the applicant; an affidavit of the applicant's spouse, dated June 10, 2003; copies of the U.S. certified abstracts of birth of the applicant's children; a letter from the applicant's spouse, dated May 20, 2002; copies of the social security cards issued to the children of the applicant; copies of tax and financial documents for the couple and copies of identification documents issued to the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 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.

The record reflects that in 1997 the applicant was arrested and convicted of driving under the influence. When the applicant was placed in prison, he claimed to be a citizen of the United States to a U.S. Border Patrol Agent. The applicant was subsequently removed from the United States as a result of his false claim to citizenship.

Counsel contends that the applicant should not be held to a standard of extreme hardship since his false claim to U.S. citizenship occurred prior to the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which amended section 212(a)(6)(C) of the Act. *Notice of Appeal to the Administrative Appeals Office*, dated June 10, 2003. Counsel states that IIRIRA directed INS [CIS] to apply the extreme hardship standard to false claims to U.S. citizenship that occurred on or after enactment, specifically September 30, 1996. *Id.* at 1-2.

The AAO finds counsel's argument unpersuasive. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. IIRIRA provisions afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver, but do not additionally afford them consideration of their waiver application under the standard applied before September 30, 1996, as contended by counsel.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

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 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; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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). The AAO notes that the interim district director incorrectly cited section 212(h) of the Act for the applicable waiver provisions for the instant application.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems 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 offers the affidavit of the applicant's spouse as evidence of extreme hardship imposed by the applicant's inadmissibility to the United States. The applicant's spouse states that the applicant's income is the family's primary financial resource and that his employment is secure in comparison to her job. *Letter from Maria Mendez Perez*, May 20, 2002. The record does not establish that the applicant will be unable to provide financially for his family from a location outside of the United States. The record does not establish that the employment of the applicant's spouse is not secure and does not demonstrate that she is unable to earn additional income in the absence of the applicant. The applicant's spouse indicates that their children will suffer as a result of separation from their father. *Id.* The AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

The record makes no assertions regarding the ability of the applicant's spouse to relocate to Mexico to remain with the applicant. Further, the record does not provide evidence of significant health conditions experienced by the applicant's spouse that could not be adequately addressed 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, *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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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