



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: OCT 08 2004

IN RE:

[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

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The waiver application was denied by the 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 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and 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 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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 23, 2003.

On appeal, counsel asserts that refusal of admission to the applicant would impose extreme hardship on his United States citizen spouse. *Appeal of Denial of Application for Waiver of Grounds of Inadmissibility*, dated October 15, 2003.

In support of these assertions, counsel submits a declaration of the applicant's spouse; a copy of the birth certificate of the applicant's spouse; a copy of the marriage certificate for the applicant and his spouse; copies of birth certificates and social security cards for the applicant's children; school assessments relating to the applicant's son and copies of financial and tax documents for the applicant and his spouse. The entire record was considered in rendering this decision.

The record reflects that the applicant falsely claimed to be a United States citizen in seeking admission into the United States.

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.

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.

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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 contends that the applicant's spouse would suffer extreme hardship if she relocates to Mexico in order to remain with the applicant. Counsel indicates that the applicant's spouse was born and raised in the United States. The record further reflects that the parents and siblings of the applicant's spouse reside in the United States as well as the six children of the applicant and his spouse. *Appeal of Denial of Application for Waiver of Grounds of Inadmissibility*, dated October 15, 2003. Counsel states that the applicant's spouse would suffer hardship in relocating to Mexico, as the educational opportunities for her children would be considerably hindered in the applicant's native country. Counsel contends that depriving the applicant's children of adequate educational opportunities will impose hardship on the applicant's spouse as "the dreams she had for her children would be destroyed." *Id.* at 6. The limits of the educational system in Mexico would most acutely affect the applicant's son, Eduardo, who suffers with special needs and requires special educational attention, according to counsel. *Id.* at 7. Counsel further notes that the applicant and her children do not speak Spanish. *Id.*

Counsel fails to establish that the applicant's wife would suffer extreme hardship if she remains in the United States maintaining close proximity to her family members, her lifelong country of residence and educational opportunities and attention for her children. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel contends that, if the applicant's spouse remains in the United States in the absence of the applicant, the applicant's wife would be "plunged ... into unaccustomed poverty." *Appeal of Denial of Application for Waiver of Grounds of Inadmissibility* at 8. The record fails to establish that the applicant will be unable to secure employment in a location outside of the United States in order to contribute to his financial security and the financial security of his family. The record reflects that the applicant's spouse was previously employed as a U.S. postal worker and has not been employed since being laid off from that position. *Declaration of Alma Anguiano*, dated October 14, 2003. The record fails to establish that the applicant's spouse is unable to obtain employment to financially provide for her family. 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.

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 likely endure hardship as a result of separation from the applicant. 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.

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.