



U.S. Citizenship
and Immigration
Services

Handwritten initials or mark

[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona, 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized citizen the United States and the husband of a United States citizen. 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, children and mother.

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 August 21, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services failed to properly apply the law and failed to consider all of the evidence presented in support of the application. *Form I-290B*, dated September 22, 2003.

The record includes a declaration of the applicant's spouse; a declaration of the applicant's mother; a copy of the naturalization certificate of the applicant's mother; copies of the United States birth certificates of the applicant's spouse and children; a copy of the marriage certificate of the applicant and his spouse and copies of tax and financial statements for the applicant and his spouse. The entire record was considered in rendering this decision.

The record reflects that the applicant concealed his 12 years of unauthorized residence in the United States when applying for a tourist visa and a Border Crossing Identification Card. The applicant subsequently obtained a visa and border crossing card and used these documents to obtain admission to the United States.

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.

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 parent and/or 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 Bureau 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's mother would suffer extreme hardship as a result of the departure of the applicant from the United States. The record demonstrates that the applicant's mother suffers from an ulcer and a back injury that occurred while she was working. As a result of her injuries, counsel asserts that the applicant's mother is unable to earn a living and depends on the applicant for support. *Declaration of Esperanza Rivero*, dated September 11, 2000. The record does not establish whether or not the applicant's mother receives disability payments as a result of being injured during the course of her employment and, more generally, the record fails to establish that the applicant's mother is dependent on the applicant for her financial security. Further, the record does not demonstrate that the applicant's mother would suffer hardship as a result of relocation to Mexico in order to remain with the applicant and/or to reside with her husband who lives in Mexico.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocation to Mexico to remain with the applicant. Counsel asserts that the applicant's spouse was born and raised in the United States and that her children are also United States citizens by birth. Counsel indicates that the applicant's spouse would be unable to financially support herself and their children in the absence of the applicant. The record establishes that the applicant's spouse contributes financially to the household income of her family. *Letter from Excell Agent Services*, dated July 26, 2000. Further, the record fails to establish that the applicant will be unable to contribute to his family's financial stability from a location outside of the United States. 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 and mother will likely endure hardship as a result of separation from the applicant. However, their 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 or parent 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.