



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse 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.

The acting 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 Acting District Director*, dated July 30, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services failed to consider the extreme hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility to the United States. Counsel further contends that the applicant freely admitted the underlying fraud or misrepresentation and did not use the fraudulent document to obtain further benefits beyond admission to the United States. *Form I-290B*, dated August 26, 2003. The AAO notes that counsel fails to provide additional documentation on appeal to support these assertions.

The record contains a letter from the applicant's spouse, dated August 19, 2002; a copy of the naturalization certificate of the applicant's spouse; a statement from the applicant; copies of identity documents for the applicant and copies of financial documents for the applicant and his spouse. The entire record was considered in rendering this decision.

The record reflects that on or about January 1996 the applicant entered the United States using a fraudulent lawful permanent resident card. The applicant departed from the United States in October 1996 and subsequently attempted to reenter without inspection and was apprehended by immigration officials. The applicant was granted voluntary departure to Mexico and after departing, entered the United States without inspection. *Statement about Entries 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 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 wife would suffer as a result of relocation to Mexico to remain with the applicant. The applicant's spouse indicates that she is a full-time student in the United States and that all of her family members reside in the United States. *Letter from Olga Patricia Lopez*, dated August 19, 2002. The applicant's spouse states that she might not be able to work in Mexico even if she completes her design degree. The AAO notes that the record fails to establish that the applicant's spouse would be unable to obtain employment in Mexico and finds that unsubstantiated assertions such as those of the applicant's spouse in relation to her employability in Mexico are inadequate to support a finding of extreme hardship.

Counsel also seeks to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States to continue pursuit of her educational and employment goals and proximity to her family. The applicant's spouse indicates that she will suffer psychologically as a result of separation from the applicant. *Id.* 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, 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.