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U.S. Department of Homeland Security  
20 Mass. Ave, N.W. Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*A2*

FILE:

LOS ANGELES

Date: **AUG 10 2005**

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, 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 is 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 submitting a fraudulent Resident Alien Card (Form I-551) in connection with her entry into the United States in March of 1996.<sup>1</sup> The applicant's U.S. citizen spouse subsequently filed a Petition for Alien Relative (Form I-130), on August 26, 1997, based on his marriage to the applicant on August 17, 1995, in Mexico. The applicant simultaneously applied for adjustment of status pursuant to section 245 of the Act. The I-130 petition was approved on March 31, 2004. During the course of the applicant's adjustment of status interview it became apparent that the applicant had entered the United States through fraud. The record reflects that the applicant's adjustment of status application was denied on two occasions due to the applicant's failure to respond to requests for additional information. It appears that the applicant may not have received the notices due to address changes, and she was ultimately successful in her efforts to have the case reopened. *See Notice from the District Director Advising the Applicant of the Need to File a Motion to Reopen*, dated August 13, 2002. The district director proceeded to adjudicate the Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to allow her to remain in the United States with her United States citizen spouse.

The district director issued a decision denying the waiver application on December 5, 2002, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case her U.S. citizen spouse. *Decision of the District Director*, dated August 21, 2002. The applicant filed an appeal on January 2, 2003. No brief was provided in support of the appeal and it appears that the applicant's brief statement on the Notice of Appeal (Form I-290B), addresses some confusion that apparently occurred when she initially attempted to submit the appeal instead of focusing on any assertion of error in the district director's decision. However, the AAO notes that the applicant pursued the appeal without the assistance of counsel.<sup>2</sup> Therefore, it will give her the benefit of the doubt and considers the appeal to be an assertion that the district director's decision was unsupported by the evidence in the record, and will proceed to review the case on the merits. The entire record has been considered in rendering a decision on the appeal.

The record contains very little information in support of the waiver application. The principal documents consist of a letter submitted by the applicant's spouse, [REDACTED]. That letter, written while the applicant's spouse was incarcerated, states that the applicant and the couple's daughter, have given him the "will and moral strength" to focus on the family's future. *See Letter from Raul Mendez*, dated July 23, 2001. The spouse states that the couple had, as of that time, been married for more than six years. The applicant's spouse states that he is very devoted to his daughter and is troubled by the fact that she may grow up not

<sup>1</sup> The AAO notes that there is some inconsistency in the district director's decision regarding the applicant's ground of inadmissibility. Although the district director properly notes that the applicant was found inadmissible on the basis of having committed an act of fraud or misrepresentation relating to the presentation of the alien registration receipt card, the decision does not cite the most appropriate ground, Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), but instead cites section 212(a)(2)(A)(i)(I), relating to the commission of a crime involving moral turpitude. The applicant was not convicted of any offense relating to her fraudulent entry, and while the record contains a statement by the applicant relating to her entry to the U.S. through fraud, the record does not reflect that the applicant has admitted to having committed a CIMT.

<sup>2</sup> The applicant appears to have pursued her appeal without the assistance of counsel. The record, however, contains a Notice of Entry of Appearance (Form G-28) from attorney Glenn N. Kawahara. The AAO is sending its decision to counsel as well as the record contains no indication that counsel no longer represents the applicant in proceedings before this agency.

knowing him.<sup>3</sup> He states that the applicant and their daughter have visited him many times during his incarceration and that his desire to rejoin his family has given him the incentive and motivation to stay focused and positive, stay out of trouble, and once again become a productive member of society.<sup>4</sup> The applicant's spouse asks that she be permitted to remain in the United States, stating that there will not be a comparable future for her or their child in Mexico. *Id.*

The spouse's statement is the only evidence specifically submitted in support of the waiver application, although the AAO notes that the file also contains documents submitted in support of the adjustment of status application which indicate that the applicant's spouse had secured employment, as had the applicant, although her employment was terminated due to the expiration of her employment authorization.<sup>5</sup> No other evidence that can be said to support the application appeared in the record.

The AAO notes that the district director's decision failed to address any of the evidence in the record and simply concluded that extreme hardship was not shown. Nevertheless, the AAO reaches the same conclusion and notes that the spouse's letter does little to demonstrate that he would experience extreme hardship on account of a denial of the waiver to the applicant. 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.

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<sup>3</sup> The record reflects that since the time of the spouse's letter in support of the waiver application, another daughter was born to the couple. The couple therefore, now has two U.S. citizen daughters aged six and three. 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.

<sup>4</sup> The record reflects that the applicant's spouse was incarcerated in Arizona on October 16, 1999, for an unspecified crime, and was scheduled to be released on October 15, 2001. Subsequent to his release he appears to have rejoined his family and has continued to support the applicant's request for adjustment of status.

<sup>5</sup> This information appears in the Affidavit of Support (Form I-864) submitted by the applicant's spouse on or about September 19, 2003, as well as from copies of tax returns for the couple for the 2000-2002 tax years. Although the couple appears to have been employed, the record reflects an income of less than \$18,000 to support their family of four.

- (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.

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, 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.

As previously noted, the record contains little evidence in support of the waiver application. The spouse's statement, while noting the close, loving relationship among the applicant and her family members and his desire to rejoin his family during his incarceration, does little to advance the applicant's case.

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, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship 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 she 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.