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**U.S. Citizenship
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HL

FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE

Date: **AUG 31 2005**

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:



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 Acting District Director, Los Angeles District Office, 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The acting district director further found that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for over 180 days. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to adjust his status to permanent resident and remain in the United States with his permanent resident 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 District Director*, dated June 4, 2003.

On appeal, counsel contends that the applicant's permanent resident spouse will suffer extreme hardship if the applicant is compelled to leave the United States. *Brief in Support of Appeal*, p.1-2, dated July 18, 2003.

The record contains a brief from the applicant's counsel; a statement from the applicant in support of the appeal; a statement from the applicant in support of the original Form I-601, Application for a Waiver of Ground of Excludability; a statement from the applicant's spouse; a copy of the applicant's spouse's permanent resident card; a statement and laboratory report from the doctor of the applicant's spouse, and; copies of federal tax forms of the applicant's son. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible.

The record reflects that the applicant attempted to procure admission into the United States by presenting a birth certificate and driver's license of another individual. Thus, the applicant made a willful misrepresentation of a material fact by claiming the identity of another individual. Accordingly, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

The acting district director further found that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for over 180 days. However, unlawful presence is only triggered by a departure that takes place after April 1, 1997, the date of enactment of unlawful presence provisions under the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* As the applicant has been in the United States without interruption since January 1996, he has not departed after April 1, 1997, and thus he has not accrued unlawful presence as contemplated by section 212(a)(9)(B)(i)(I) of the Act. Therefore, the applicant is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

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 hardship suffered by the applicant's wife. 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 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 asserts that the applicant's permanent resident spouse will suffer extreme hardship if the applicant is compelled to leave the United States. *Brief in Support of Appeal* at 1-2. Counsel provides that the applicant's spouse would be required to depart the United States with the applicant, as she has no means for independent economic support due to suffering from arthritis and having no job skills. *Id.* at 1. Counsel states that the

applicant would be unable to send enough funds to his wife from Mexico to sustain her needs. *Id.* at 2. Counsel asserts that the hardship to the applicant's spouse would be extreme, as she would be forced to give up her permanent resident status in the United States. *Id.* The applicant indicates that he would likely work on a fishing boat in Mexico, and he would be unable to send sufficient funds to his wife in the United States due to his small earnings. *Applicant's Statement on Appeal* at 2.

The applicant's spouse provides that she has not worked in over 10 years, and she is unable to work presently due to severe arthritis. *Statement from Applicant's Spouse on Appeal* at 1. She further explains that if she relocates to Mexico she will have to leave her home and three adult children in the United States. *Id.* at 2. She stated that she speaks and understands little English. *Id.* The doctor of the applicant's spouse provides a letter in which she indicates that tests suggest that the applicant's spouse suffers from rheumatoid arthritis, and further evaluation from a specialist is recommended. *Letter from Dr. Elena Somma, M.D.*, dated July 17, 2003. In a statement from the applicant submitted in support of the Form I-601 application, he further indicated that he wishes to remain in the United States to provide economic assistance for his son while his son attends college. *Applicant's Statement in Support of Form I-601*.

Upon review, the applicant has failed to show that a qualifying relative will suffer extreme hardship should he depart the United States. In fact, the applicant has failed to submit conclusive evidence that he in fact has a qualifying relative. While the applicant claims that he is married to a permanent resident, the applicant has not submitted a copy of his marriage certificate to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has identified no other qualifying U.S. citizen or permanent resident relatives whose hardship may be considered in these proceedings.

For the purpose of analysis, assuming the applicant had established that [REDACTED] is his permanent resident spouse, he has not shown that she will suffer extreme hardship should he depart the United States. The applicant asserts that his wife will suffer financial hardship if the applicant is denied a waiver of inadmissibility, as the applicant supports his wife and she would likely be required to relocate to Mexico with him to continue this support. The AAO acknowledges that the applicant and his spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility, and they may be unable to support two households. However, the applicant's assessment of his projected income and expenses in Mexico reflects that he can meet all of his and his wife's financial needs should they return there. 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.

The applicant's spouse states that she has three adult children and three grandchildren in the United States, and she would be deprived of their companionship should she relocate to Mexico. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her family members. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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 applicant provides that his wife suffers from arthritis. However, with the exception of a single doctor's evaluation, the applicant has provided no documentation to show that his wife is under treatment for any physical or mental health conditions, or to show that she would not be able to obtain adequate medical care should she relocate to Mexico. Thus, the applicant has not shown that his spouse would suffer extreme hardship due to her health status.

Further, the record does not reflect that the applicant's spouse would suffer difficulties as a result of adjusting to a new culture should she return to Mexico. The applicant's spouse is a native and citizen of Mexico, and the record suggests that she spent most of her life there. The applicant's spouse stated that she speaks and understands little English, thus it is assumed that she is accustomed to communicating in Spanish with Spanish-speaking individuals. While the AAO understands that the applicant's spouse wishes to preserve her permanent resident status in the United States, the loss of such status is not deemed extreme hardship. It is noted that the applicant's spouse is not required to depart the United States, thus she may maintain her permanent resident status if she wishes. While the applicant's spouse states that she does not know if her three adult children in the United States would be able to provide economic assistance if she remains, the evidence of record does not establish that her children cannot or would not offer her financial support.

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(a)(6)(C) 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.