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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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Htz

FILE:



Office: SPOKANE

Date:

NOV 07 2005

IN RE:

Applicant:



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 District Director, Spokane, 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 engaging in fraud or willful misrepresentation of a material fact in order to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. 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 U.S. citizen wife 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 District Director*, dated March 23, 2004.

On appeal, counsel for the applicant explains that the applicant did not intend to engage in misrepresentation. *Brief in Support of Appeal* at 1. Counsel contends that the applicant should not be prejudiced by the fact that he was charged with “Manufacture, Delivery, Possession of a Controlled Substance within 1000 feet of a school bus stop,” as he was found not guilty of the offense. *Id.* at 2. Counsel asserts that the applicant’s wife and children will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Id.*

The record contains a brief from counsel; three statements from the applicant; a statement from the applicant’s wife, and; documentation of the applicant’s criminal and immigration history. 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.

The record reflects that the applicant has been arrested and/or convicted of crimes on numerous occasions, including: (1) an arrest in 1995 and charge of manufacture, delivery, possession of a controlled substance within 1000 feet of a school bus stop, which resulted in a verdict of not guilty; (2) a conviction for second degree escape (from a detention facility) for which he pleaded guilty on May 17, 1995, and; (3) an arrest on

March 22, 1997 leading to convictions for reckless driving and driving while a license is suspended or revoked. On November 14, 1994, the applicant was further cited for hunting and killing big game without a valid hunting license, hunting big game with an illegal weapon, and hunting big game during a closed season. The record further shows that the applicant willfully misrepresented his name and birth date when arrested in 1995, resulting in his treatment as a minor by both law enforcement officers and the U.S. Immigration and Naturalization Service when he was in fact of the age of majority and not eligible for special considerations accorded only to minors.

On August 2, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Form I-485 instructs an applicant to reveal whether he has been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations. However, the applicant failed to reveal his arrests, fines, or convictions, either on Form I-495 or during his associated interview with an immigration officer. The applicant further failed to report that he had used an alias. The applicant's criminal history was only revealed through associating his fingerprints with law enforcement records. Whether the applicant had been arrested, convicted of crimes, or cited for non-traffic violations was material to whether he was eligible to adjust his status to permanent resident pursuant to his Form I-485 application. Accordingly, as the applicant engaged in willful misrepresentation of material facts, he was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Counsel contends that the applicant should not be prejudiced by the fact that he was arrested and charged with "Manufacture, Delivery, Possession of a Controlled Substance within 1000 feet of a school bus stop," as he was found not guilty of the offense. *Brief in Support of Appeal* at 2. The AAO agrees that the offense does not render the applicant inadmissible for having committed the crime itself, and the applicant was not deemed inadmissible for having done so. The arrest and charge only contribute to the applicant's inadmissibility inasmuch as he failed to reveal the fact that he had been arrested and charged with the crime, when such fact was material to an immigration benefit for which he was applying. Thus, the arrest and charge were properly considered in light of section 212(a)(6)(C)(i) of Act.

The district director noted that the applicant committed acts of willful misrepresentation on five separate occasions, citing instances when the applicant provided a false name and date of birth to law enforcement officials. The district director implied that such acts of misrepresentation directly render the applicant inadmissible under section 212(a)(6)(C)(i) of Act. However, section 212(a)(6)(C)(i) of Act only considers acts of fraud or misrepresentation committed in the course of seeking a visa, other documentation, or admission into the United States or other benefit provided under the Act. Thus, the applicant's act of misrepresenting his identity to law enforcement officers during the course of a criminal arrest does not render him inadmissible under section 212(a)(6)(C)(i) of Act, as he was not engaging in fraud or misrepresentation in order to obtain an immigration benefit under the Act. Yet, as noted above, the fact that the applicant failed to reveal such prior arrests when applying to adjust his status to permanent resident did render him inadmissible under section 212(a)(6)(C)(i) of Act.

Though counsel and the applicant state reasons to explain why the applicant misrepresented his identity to law enforcement officers, the fact remains that the applicant was arrested, charged, and/or convicted of numerous offenses. As discussed above, the applicant is inadmissible under section 212(a)(6)(C)(i) of Act for failing to reveal his criminal history. The applicant's culpability regarding his various offenses is not at issue and not

relevant in these proceedings. Accordingly, the applicant has not shown that he was erroneously deemed inadmissible.

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 Bureau 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.

On appeal, counsel provides that the applicant's U.S. citizen wife and three U.S. citizen children will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Brief in Support of Appeal* at 2. The applicant's wife stated that she had her first child with the applicant when she was age 14, and she indicated that she was age 21 as of the date of filing the application. *Statement from Applicant's Wife in Support of Form I-601*. She provided that she and the applicant married when she was age 18, and they now have three children. *Id.* She stated that she has not finished school or learned a trade, and her experience is limited to caring for her children and the applicant. *Id.* The applicant's wife stated that it would be very difficult for her to find a job that would provide sufficient income to support her family in the applicant's absence. *Id.* She indicated that the applicant provides health care for her and her children, and he makes repairs and performs maintenance on their home. *Id.* The applicant's wife explained that she would experience emotional hardship if separated from the applicant due to the loss of his support. *Id.*

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. While the applicant's wife expressed that she would experience emotional hardship if separated from the applicant, the record does not show that she will experience emotional consequences that go beyond those experienced by all families who are separated due to deportation or exclusion. 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.

Further, it is noted that the applicant's wife is free to relocate outside of the United States with the applicant, though as a U.S. citizen she is not required to do so.

The record does not support that the applicant's wife will endure economic hardship as a result of the applicant's absence that rises to the level of extreme hardship. The applicant's wife explained that she has not worked. Yet, the record reflects that she is of a young age, and it is presumed she can enter the workforce. While the AAO acknowledges that she may face significant challenges in securing care for her three children in order to engage in employment, the record does not suggest that she would be unable to meet her financial needs. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Counsel asserted that the applicant's three U.S. children would also suffer hardship due to the applicant's absence. However, hardship to the applicant's children is not a relevant consideration in the present proceeding. Section 212(i)(1) of the Act.

Based on the foregoing, the hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States does not rise to the level of extreme hardship. 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.