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U.S. Citizenship  
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Services

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*Handwritten initials*

FILE: [Redacted] Office: CHICAGO Date:

NOV 07 2005

IN RE: Applicant: [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.

*Handwritten signature of Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen in order to procure entry into the United States. 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 and adjust his status to permanent resident.

The district director concluded that the applicant 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 November 24, 2004.

On appeal, the applicant contends that if he is prohibited from remaining in the United States his wife and children will suffer extreme hardship. *Statement on Form I-290B*.

The record contains a statement from the applicant on Form I-290B; a statement from counsel in support of the initial Form I-601 application; a letter from a church confirming the applicant's participation; letters from the applicant's employer confirming his employment; a letter from the applicant's wife's employer confirming her employment; documentation showing that the applicant and his wife purchased a home; financial and tax documents for the applicant and his family; a copy of the naturalization certificate for the applicant's wife; a copy of the applicant's marriage certificate; copies of the applicant's children's birth certificates, and; a transcript of an interview regarding the applicant's attempted entry to the United States under a false claim of U.S. citizenship. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(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 (including section 274A) or any other Federal or State law 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 in January 1995 the applicant applied for admission to the United States at Laredo, Texas by presenting a U.S. birth certificate that belonged to another individual. Thus, the applicant falsely represented himself to be a U.S. citizen for the purpose gaining admission to the United States. Accordingly, he was deemed inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

*Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

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 applicant 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, the applicant contends that if he is prohibited from remaining in the United States his wife and children will suffer extreme hardship. *Statement on Form I-290B*. Counsel provided that the applicant's wife and children depend on the applicant because he is the primary income earner. *Letter from Counsel Submitted with Form I-601* at 1. Counsel stated that the applicant and his wife own a home and that the applicant's wife

would be unable to make mortgage payments without the applicant's assistance. *Id.* The record contains evidence that the applicant's wife is employed part-time as a monitor in a school. *Letter from Employer of Applicant's Spouse*. Counsel further indicated that the applicant's wife depends on the applicant for emotional support. *Letter from Counsel Submitted with Form I-601* at 1. Counsel stated that the applicant's wife has numerous relatives in the United States, including her parents and seven siblings, yet she has little ties to Mexico. *Id.* Counsel indicated that the applicant's wife's family would be unable to help her if she returned to Mexico. *Id.* at 1-2. Counsel explained that the applicant's children understand Spanish yet they do not speak the language. *Id.* at 2. Counsel asserted that the Mexican educational system and health care services are limited where the applicant's wife used to reside. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is compelled to depart the United States. Counsel explained that the applicant's wife depends on the applicant for emotional support, suggesting that she will experience emotional hardship if she is separated from the applicant. Counsel further suggested that the applicant's spouse will experience hardship if she relocates outside the United States, as she will be deprived of the support of her family members. While the AAO acknowledges that such separation is difficult, the applicant has not shown that his wife will suffer unusual emotional consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

It further noted that the applicant's wife may relocate out of the United States with the applicant. As a Mexican native who resided in Mexico until age 14, the applicant's spouse would not experience hardships associated with adapting to a new culture and language should she return there.

Counsel indicated that the applicant's wife depends on the applicant for financial support, including the payment of their mortgage. Yet, the record reflects that the applicant's wife works part-time, thus she is capable of earning income. The AAO acknowledges that the applicant's wife may be required to support her two children alone should the applicant relocate to Mexico without his family. Yet, the applicant has not shown that his wife would be unable to earn more than her present income to meet her and her children's economic needs. It is noted that the applicant and his wife purchased a home on September 29, 2003, at a time when they were aware that the applicant had no legal status in the United States. Thus they could not have reasonably relied on the applicant's continued presence in the United States regarding meeting their monthly mortgage expenses. It is again noted that the applicant is free to relocate abroad with the applicant should she choose, thus relieving the need for her to support a household alone in the United States. 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 stated that the applicant's U.S. citizen children will experience hardship if the applicant is compelled to depart the United States. The AAO acknowledges that the applicant's inadmissibility has significant consequences for his children. However, hardship experienced by the applicant's children is not probative of the applicant's eligibility for a waiver under section 212(i) of the Act. Section 212(i)(1) of the Act.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited remaining in the United States, considered in aggregate, do 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)(9)(B) 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.