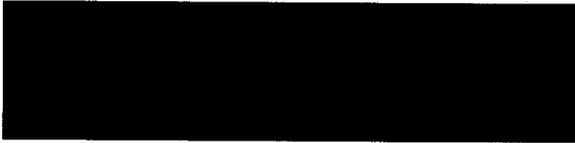


U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: LOS ANGELES, CA DATE: NOV 21 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, Director
Administrative Appeals Office

DISCUSSION: The district director, Newark, New Jersey, denied the application for waiver. The matter 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)(ii)(I), for having attempted to procure entry into the United States by falsely claiming to be a United States citizen. The applicant is married to a naturalized U.S. citizen and 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 her U.S. citizen spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director, July 14, 2004.*

Counsel asserts that the applicant's removal from the United States would cause extreme hardship to the applicant's U.S. citizen husband and four U.S. citizen children.

The record includes an affidavit from the applicant, copies of documents establishing the identity of the applicant and citizenship of the applicant's husband and children, a brief by the applicant's attorney, an affidavit from applicant's husband, a letter from the doctor of the applicant's husband and a psychological evaluation of the applicant's family, in addition to application forms submitted by the applicant and her spouse and the decision of the district director. The entire record was reviewed and considered in rendering this decision.

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

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 ... or any other Federal or State law is inadmissible.

The record reflects that the applicant presented a birth registration card issued by the State of Arizona to Jacqueline Ann Perez in order to gain admission into the United States on January 31, 1994 at El Centro, CA. She is therefore inadmissible under section 212(a)(6)(C)(ii)(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 that the applicant's children or that the applicant herself would experience upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is the hardship that would be suffered by the applicant's husband if the applicant is removed. If 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.

The applicant's spouse is a naturalized United States citizen who was born and raised in Quetzaltenango, Guatemala and has lived in the United States since 1977. He became a lawful permanent resident of the United States in 1996 and a citizen in 2000. There is very little evidence in the record of his ties to Guatemala. His father is deceased and his mother was alive in 1997 when he petitioned for his wife. There is no information that he has any ties to Mexico beyond the family of his wife. The applicant's husband is fluent in English, has raised a child from a previous marriage, four stepchildren and one child from his marriage with the applicant. He is a cabinetmaker and a supervisor who had worked at the same job for nine years when the application material was prepared in 2004. *See Psychological Assessment*, Catholic Charities, 5/18/04.

U.S. court decisions have held that the common results of removal are insufficient to prove extreme hardship. 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. *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.

The applicant's spouse provided an affidavit in support of the claim that he would suffer extreme hardship indicating that he suffered from severe anxiety, depression, digestive problems, trouble sleeping and was being treated for severe stress. The affidavit indicates that the problems described above began when it became apparent that the applicant might be removed from the United States. The affidavit also indicates that two of the children were undergoing special counseling at East Los Angeles Youth Family Services. *See Affidavit of* [REDACTED] July 30, 2004. The affidavit refers to both the letter from his doctor and the psychological assessment for more detailed information. The letter from the doctor of the applicant's husband, prepared on July 28, 2004, indicated that the applicant's husband was in the doctor's office that day suffering from stress brought on by his wife's immigration difficulties. *See Letter of* [REDACTED] July 28, 2004. The psychological evaluation indicates that the applicant's husband shares in parenting, financial

support, rule setting and discipline of the children with the applicant. He participates in school functions. He is bilingual and literate in both English and Spanish. They are stable financially with the applicant's husband as the principal financial provider but the applicant's husband fears that the expense of maintaining two households if the applicant is removed would become a hardship. The applicant's husband considers his marriage to be good and his family wonderful. He grew up in a family in which his parents had a difficult and sometimes violent relationship that included several separations and he had two previous bad relationships, one violent, in the United States before marrying the applicant. After learning that his wife might be removed, the applicant's husband has had difficulty with concentration, short term memory, digestion and sleep. He has developed an ulcer. *See Psychological Assessment, Catholic Charities, 5/18/04.*

The applicant indicated that if she is removed, she will bring the children with her to Mexico. The applicant's husband indicated he could not maintain a household and care for the children without the applicant in the United States, in part, because he has a demanding job and works long hours. The applicant's husband is concerned that the children would lack academic and social guidance without their mother in the United States and that they would lack academic and financial opportunity in Mexico. *See Psychological Assessment, Catholic Charities, 5/18/04.*

The information provided is insufficient to demonstrate hardship beyond that which could be described as a common result of removal. The evidence indicates that the applicant's husband would have a difficult time if the applicant were removed to Mexico regardless of whether he stayed in the United States or moved with the family to Mexico. Those difficulties include a much more difficult economic situation for the applicant's husband either because he would have to give up a good job in the United States or because he would have to maintain two households, one in the United States and one in Mexico. It does not appear that the applicant has any ties to Mexico and it appears that Mexico is the only place his wife would be able to live if she is removed. The record indicates that the applicant's husband is a responsible husband and father and any harm endured by the family would affect him. The applicant's husband already has experienced physical, emotional and psychological difficulties because of his fear that the family will have to separate. It appears that those difficulties may continue. In addition, if he stays in the United States the applicant would lose the support and comfort of his wife and family and if he moves to Mexico he would lose his job.

However, the harm that the applicant's husband faces cannot be described as "extreme," or be considered to be more than what would be experienced by a typical individual facing separation caused by the removal of his spouse. There is nothing in the record to indicate that the applicant's husband would be unable to continue to function and work. While there will be more financial pressure, nothing indicates that the family would be unable to maintain two households or that the applicant's husband would be unable to visit his wife and family members in Mexico if he stayed in the United States. The evidence does not indicate that the health and psychological problems of the applicant's husband threaten his life or make it impossible to work. No evidence has been presented regarding whether the applicant's husband, as the spouse of a Mexican citizen, could reside or work in Mexico. There is no indication in the record as to the economic situation of the applicant's parents, or what their ability to assist the family might be. Taken in its entirety, the record indicates that the difficulties that the applicant's husband faces are substantial but do not amount to "extreme hardship" under the Act.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen husband would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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.