

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Hz

FILE:



Office: PHOENIX, ARIZONA

Date: **SEP 21 2005**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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, Phoenix, Arizona, 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 § 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 a U.S. visa by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his 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 Excludability (Form I-601) accordingly. On appeal, counsel contends that the record contains sufficient evidence to establish that the applicant's wife would suffer extreme hardship if the applicant were removed. Counsel also asserts that the district director held the applicant to an inappropriately high standard regarding the hardship required to establish eligibility for a waiver under § 212(i) of the Act. Counsel maintains that the district director failed to properly weigh all the factors presented on evidence.

Counsel submitted a timely Notice of Appeal Form I-290B on which she indicated that she would send a brief and/or evidence to the AAO within thirty days. On June 26, 2005, counsel informed the AAO that the applicant was obtaining the services of another attorney and she was withdrawing as attorney of record. She further asked that the appeal not be summarily dismissed and asked that the AAO wait for the new attorney to submit a brief. There has been no further submission or indication of a new attorney as of this date; therefore, the record is complete. The AAO has reviewed the entire record 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.

The record reflects that on June 11, 1996, the applicant attempted to obtain a visitor's visa using false employment documentation. He is therefore inadmissible pursuant to the above provision of law.

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.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 or his children experience upon his removal is irrelevant to § 212(i) waiver proceedings; only the hardship suffered by the applicant's wife is of concern in this analysis. 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). Therefore, since the district director found that the applicant failed to establish extreme hardship, there was no need to consider discretionary factors such as the fact that the misrepresentation occurred nearly ten years ago, and it was an isolated incident.

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 § 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 states that the district director held the applicant to an inappropriately high standard with regard to the level of hardship to be established. Counsel also asserts that, in addition to *Matter of Cervantes-Gonzalez, Id.*, other relevant BIA cases must be considered in this analysis. However, counsel fails to specify the precedent decisions to which she refers.

The record does not establish extreme hardship to the applicant's spouse whether she remains in the United States or relocates to Mexico to accompany the applicant. The record contains a letter written on November 20, 2003 by psychologist C. Edwin Druding, who interviewed the applicant and his wife on one occasion. Dr. Druding noted that the applicant's wife and child would be adversely affected by the applicant's removal, but he did not indicate that the applicant's wife would suffer greater psychological hardship than similarly situated spouses. The AAO recognizes that the applicant's wife would suffer emotionally as a result of the applicant's removal; however, her situation is typical to cases involving the removal of a spouse. The applicant's wife's stated potential emotional difficulties cannot be considered extreme.

There is no evidence on the record that the applicant's wife would suffer extreme financial hardship if the applicant is removed. The AAO acknowledges that the applicant and his spouse may be required to alter their lifestyle as a result of the applicant's inadmissibility. However, the record does not establish that the applicant would be unable to contribute to his family's support from a location outside the United States, or that the applicant's wife would be unable to obtain employment in Mexico. The AAO notes that 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.

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.

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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.