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

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FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date:

APR 26 2006

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 PETITIONER:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Interim District Director denied the waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to gain admission to the United States by presenting a false alien registration card.

The director found that the applicant was not eligible for a waiver under INA § 212(i), 8 U.S.C. § 1182(i) because he failed to establish that he was the spouse, son or daughter of a United States citizen or lawful permanent resident.

On appeal, counsel stated that the applicant is the spouse of a lawful permanent resident and is therefore eligible for a waiver.

The entire record was reviewed in rendering this decision. Supporting the applicant's claim are the Form I-290B filed by counsel with a copy of the resident alien card of the applicant's spouse and a copy of their marriage certificate, with translation. There is no evidence relating to whether the applicant's spouse would suffer hardship if he were removed from the United States. The record also includes Form I-601, *Application for Waiver of Ground of Excludability*, submitted by the applicant, indicating that he claimed eligibility for the waiver through his son, a U.S. citizen. It is noted that the applicant's son is not a qualifying relative under INA § 212(i). In addition, the record includes the interim district director's decision denying the waiver application and documentation indicating that the applicant was convicted in the United States District Court, Southern District of Texas of attempting to enter the United States by a willfully false or misleading representation of willful concealment of a material fact, in violation of Title 8, United States Code, Section 1325(a)(3) as well as copies of documentation indicating that the applicant was removed at Laredo, Texas on November 10, 1999. See, Form I-296, *Notice to Alien Removed/Departure Verified*. The decision of the district director indicates that the applicant returned to the United States illegally within the same month. *Decision of the District Director*, at 3.

Section 212(a)(6)(C) of the Act, 8 U.S.C § 1182(a)(6)(C) provides, in pertinent part:

- (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 indicates that the applicant was convicted on November 10, 1999, in the United States District Court, Southern District of Texas, of "attempting to enter the United States by a willfully false or misleading representation or willful concealment of a material fact." He is therefore inadmissible under INA § 212(a)(6)(C).

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, either a spouse or parent. If extreme hardship is established, it is but one favorable factor to be considered in the determination of how the Secretary should exercise his discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his lawful permanent resident spouse, as there is no indication that he has any other qualifying relatives.

In *Cervantes-Gonzalez*, the Board outlined the following factors deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Cervantes-Gonzalez* at 565-566. (Citations omitted).

The record reflects that the applicant's lawful permanent resident spouse is a qualifying relative. However, the record contains no evidence indicating the effect that his inadmissibility would have on his wife. As a result, the applicant has not established that his inadmissibility would cause extreme hardship to a qualifying relative, as is required to establish eligibility for a waiver under INA § 212(i).

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(i) of the Act, the burden of proving eligibility is entirely on the applicant. 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.