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

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: AUG 04 2008

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:

[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.

Robert P. Wiemann, Chief
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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(C)(i), for having falsely claimed to be a United States citizen on or about January 2, 1993. The applicant is the daughter of a United States citizen and a lawful permanent resident of the United States. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), so that she may reside in the United States with her parents 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 the District Director*, dated September 9, 2004.

On appeal, counsel contends that the application was denied as a result of ineffective assistance of prior counsel. Counsel asserts that if the merits had been addressed by prior counsel, the application would have been granted. *Form I-290B*, dated October 8, 2004.

In support of these assertions, counsel submits a brief; affidavits of the applicant's parents; an affidavit of the applicant; a copy of the naturalization certificate issued to the applicant's mother; a copy of the permanent resident card of the applicant's father; copies of the United States birth certificates of the applicant's children; a letter from a physician treating the applicant's mother; several letters of support; information about Type II Diabetes Mellitus and pages from the State Bar of Arizona website. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act 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.
- (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 . . . is inadmissible.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

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 on or about January 2, 1993, the applicant claimed to be a citizen of the United States to immigration officials in an attempt to procure admission into the United States.

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. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provisions 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 [Citizenship and Immigration Services] 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. Any hardship suffered by the applicant herself is irrelevant to waiver proceedings under section 212(i) of the Act. 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 Board 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.

Counsel contends that extreme hardship would be imposed on the applicant's parents as a result of relocating to Mexico in order to remain with the applicant. Counsel states that the applicant's father is currently awaiting trial and is confined to county jail. *Letter from [REDACTED]*, 5, dated October 6, 2004. Counsel indicates that even if the applicant's father is found not guilty of his pending charges and released from jail, he has other children and a fiancée in the United States preventing him from relocating to Mexico. *Id.* As to the applicant's mother, counsel asserts that she suffers from diabetes and although her condition could potentially be treated in Mexico, counsel states that the applicant's mother would be unable to afford to pay for medical care while earning far less income in Mexico. *Id.* at 4. Counsel further contends that all of the immediate family members of the applicant's mother reside in the United States and that she only has extended family relationships in Mexico. *Id.* at 5.

Although the record establishes that the applicant's mother and father may face hardship as a result of relocation to Mexico in order to remain with the applicant, the record fails to establish that extreme hardship would be imposed on the applicant's parents as a result of remaining in the United States in the absence of the applicant in order to maintain proximity to family members and residence in their adopted country with access to employment and affordable health care. Counsel asserts that the applicant's parents would suffer financially as a result of separation from the applicant. *Id.* at 4-5; *see also Affidavit of [REDACTED]* dated October 6, 2004; *see also Affidavit of [REDACTED]* dated October 5, 2004. The applicant's mother indicates that the applicant assists her financially when she does not have enough money to pay the bills and "helps out with her younger brother and sister." *Affidavit of [REDACTED]* The applicant's father states that his girlfriend and child live in a house that was originally purchased by the applicant. He explains that the applicant allowed them to "take over her payments to buy her house" alleviating the need for them to produce a down payment on the house. *Affidavit of [REDACTED]*. Although the generosity of the applicant speaks to her good moral character, the statements of the applicant's parents do not establish a level of financial hardship above or beyond the level of hardship commonly experienced as the result of separation from a loved one. The record fails to establish the employment status of the applicant's siblings, the fiancée of the applicant's father and the spouse of the applicant's mother. Although the applicant's parents indicate that separation from the applicant will impose financial hardship on the family, the record fails to establish that the working age people in the families of the applicant's mother and father are unable to financially care for themselves and provide for the applicant's parents.

Similarly, although the AAO sympathizes with the medical condition of the applicant's mother, the record fails to establish that the applicant is uniquely situated to provide assistance to her mother in going to medical appointments and generally regulating her condition. Counsel submits a letter from a physician who treats the applicant's mother for diabetes. *See Letter from [REDACTED]* dated October 5, 2004. The writing physician relates that the applicant assists her mother in managing her condition, including medications, appropriate diet and exercise. *Id.* The letter, however, fails to establish the extent of the care required by the

applicant's mother on a daily basis. In the absence of documentation establishing the extent of the qualifying relative's incapacity as a result of her medical condition, the AAO is unable to render a finding of extreme hardship based on the removal of the applicant as her mother's caregiver. Moreover, the record fails to establish that the other children and the spouse of the applicant's mother are unable to provide the care that the applicant's mother requires, either individually or collectively.

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. The AAO recognizes that the applicant's parents would likely endure hardship as a result of separation from the applicant or as a result of relocating to Mexico in order to remain with the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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 she merits a waiver as a matter of discretion. Therefore, the AAO acknowledges counsel's submission of several letters of support on the applicant's behalf, but having not reached a weighing of the factors presented in the application, does not consider their relevance to the granting of a waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.