



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: AUG 09 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 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, Los Angeles, California 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 attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a 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 reside 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 upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated November 24, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in finding the applicant inadmissible and by finding that she failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated December 21, 2004.*

In support of these assertions, counsel submits a brief dated January 19, 2005. The record also includes an affidavit from the applicant's spouse [REDACTED] dated April 8, 2002; copy of the birth certificate for the applicant's U.S. Citizen son; copy of the applicant's car insurance policy; copy of the Mexican birth certificate of the applicant; copies of the applicant's spouse's tax statements; letter of employment for the applicant's spouse dated April 1, 2002; copy of the marriage certificate for the applicant and her spouse; copy of the divorce decree of the applicant; and a copy of the birth certificate for the applicant's spouse. The entire record was reviewed and considered 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.
- (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 AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The record reflects that the applicant admitted in her adjustment of status interview to using a false U.S. birth certificate in April 1996 at the age of 22. The AAO acknowledges counsel's assertion that the adjudicating officer erred in finding an alleged 1996 incident involving a false claim to U.S. citizenship, *Attorney's Brief*, p.2; however, nowhere in his brief or supporting documentation does counsel elaborate on the specifics of this 1996 incident. Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible. The applicant is eligible for a waiver of this misrepresentation because the incident occurred prior to September 30, 1996.

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 alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; The AAO acknowledges counsel's assertion in his brief that the applicant demonstrated the necessary hardship to her U.S. citizen child and U.S. citizen step-child; however, the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 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 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 the applicant's spouse would suffer extreme hardship as a result of departing from the United States, as it would break the family apart. *Attorney's Brief*, p.2. Counsel states that the applicant's spouse's age, health, the care and support he provides to their U.S. citizen child, and the impact of separation upon the applicant's spouse's seven-year old daughter would amount to extreme hardship. *Id. See Also Form I-290B*. The applicant's spouse would lose the mental and emotional support of the applicant. *Attorney's Brief*, p.2. Any type of separation due to the applicant being removed from the United States would be devastating and traumatic to the applicant's spouse. *Affidavit from the applicant's spouse dated April 8, 2002*. Additionally, the applicant's spouse would be affected financially if the applicant departed the United

States, as he would be unable to support separate households and care for his daughter in the United States and his wife and baby son in Mexico. *Id.* Counsel did not address and there is nothing in the record as to whether the applicant's U.S. citizen spouse would face extreme hardship if he relocated to Mexico. The record also fails to demonstrate that the applicant would be unable to contribute to her family's financial well-being from a location outside of the United States.

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 spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal 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 spouse caused by the applicant's inadmissibility to the United States. The AAO acknowledges counsel's assertion that the Service abused its discretion when evaluating the applicant's Form I-601 waiver, *Attorney's Brief*, p.2; however, 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.

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.