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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, 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, San Francisco, 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 lawful permanent resident 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 July 13, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in finding that the applicant 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 July 23, 2004.*

In support of these assertions, counsel submits a brief dated August 24, 2004. The record also includes a letter from the applicant's spouse [REDACTED] dated April 29, 2004; letter from the applicant dated April 29, 2004; copy of U.S. birth certificates for the applicant's daughters; letter from [REDACTED] dated March 2, 2004; the applicant's birth certificate from Mexico; the applicant's passport from Mexico; the applicant's marriage certificate; the Resident Alien Card for the applicant's spouse; employment letters for the applicant and her spouse; and tax statements for the applicant and her 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.

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 record reflects that the applicant admitted in her adjustment of status interview to using a false entry card to cross the border from Tijuana, Mexico into California. The AAO observes that the Form I-485 states that the applicant used this false document to cross the border in 1999, while the adjudicating officer's notes state

that this incident occurred in 1996. Given that the District Director's decision finds the incident to have occurred in June 1996, counsel does not contest the entry date in her brief, and letters written by the applicant and her spouse confirm that the applicant entered in June 1996, the AAO will use the June 1996 date as the time when the applicant misrepresented herself to gain entry into the United States.

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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The applicant's spouse has a third grade education and has spent years working as a laborer. *Attorney's Brief*, p.5. Counsel contends that the applicant's spouse has suffered work-related injuries that render him less employable as a laborer in Mexico. *Id.* In Mexico, he would be unable to receive the recommended physical therapy and vocational training. *Id.* According to the applicant's spouse's physician, the applicant's spouse sustained an open facial fracture on February 18, 2003 which required surgical treatment. *Letter from [REDACTED] MD, dated March 2, 2004.* The applicant's spouse returned to work, but had ongoing complaints which included imbalance. *Id.* He sustained a related work injury when he fell as a result of these symptoms, fracturing his right arm/wrist and exacerbating complaints of headache and neck pain that started with his initial injury. *Id.* He has separate complaint of facial pain, related to the trauma site, and associated complaints of neck pain in the right paracervical region. *Id.* When evaluating the applicant's spouse's subjective and objective factors of disability, his physician found that his headaches, vertigo and cervical conditions rated slight-to-moderate and noted that he has weakness of the right hand and evidence of carpal tunnel syndrome. *Id.* The physician prescribed no working in extreme temperatures or at great heights, no repetitive neck motions, and no heavy use of his right arm/hand. *Id.* No future surgeries are anticipated and future medical care would encompass continued use of his medications and courses of therapy for his neck or arm as needed. *Id.* While the AAO acknowledges the inconvenience of these injuries, it notes

that the applicant's spouse's injuries are non-life threatening and he is still able to work and function. Counsel states that the applicant's spouse would find it difficult to be able to afford medical coverage and medicine if he is unemployed. *Attorney's Brief*, p.7. Additionally, he would be unable to provide for his family without the help of the applicant's salary. *Id.* Although counsel asserts that neither the applicant nor her husband would be able to obtain good jobs due to their lack of education and experience (*Id.*), there is nothing in the record that shows the applicant would be unable to contribute to her family's financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in the United States. The applicant's spouse feels he cannot take care of his children alone. *Letter from the applicant's spouse*, [REDACTED] dated April 29, 2004. Counsel asserts that the applicant's spouse would suffer if he were permanently separated from his spouse and children. *Attorney's Brief*, p.6. 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.

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.