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20 Mass. Ave., NW, Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PHOENIX, AZ

Date: DEC 01 2006

IN RE:

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:

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 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), 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 his lawful permanent resident 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 October 6, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated November 4, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant's spouse, dated November 26, 2004; a letter from the applicant's spouse, dated August 24, 2004; a letter from the applicant, dated August 24, 2004; a letter from the applicant's son, dated July 27, 2004; a letter from the applicant's father-in-law and mother-in-law, dated July 27, 2004; letters of support from the applicant's brother-in-law and sister-in-law, dated July 26, 2004; letters of support from friends; medical reports for the applicant's spouse; medical reports for the applicant's children; medical reports for the applicant's father-in-law; tax records for the applicant and his spouse; and bank statements for the applicant and his 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 on November 13, 1987 the applicant attempted to gain admission into the United States at the port of entry in Nogales, Arizona by falsely claiming that he was a citizen of the United States, born in Grand Canyon, Arizona. *Form I-213*. 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 inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's lawful permanent resident spouse if the applicant is removed. If 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 qualifying relative must be established in the event that she resides in Mexico or the United States, as she 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A for the applicant's spouse*. Her parents and three siblings live in the United States. *Attorney's brief*. The applicant's spouse financially contributes to her household. Although counsel asserts that she earns between \$1000 and \$1200 per week from her clothing store business (*See attorney's brief*), joint tax statements from 2003 on behalf of

the applicant and his spouse show a combined income of \$30,071 and a tax statement from 2002 on behalf of the applicant's spouse shows an income of \$4,388. *See 2002-2003 tax statements.* Returning to Mexico would mean eliminating their income by closing down the business in the United States, as the applicant's spouse does not know how to start a similar business in Mexico. *Attorney's brief.* The AAO recognizes these difficulties. It does not find, however, that the record demonstrates that neither the applicant nor his spouse would be unable to sustain themselves and contribute to their family's financial well-being from a location outside of the United States. Counsel asserts that the applicant's spouse has serious health issues relating to depression and cancer. *Attorney's brief.* The AAO notes that in a medical report dated February 24, 2002 the applicant's spouse tested negative for cervical cancer. *Report, Alliance Medical Laboratory, dated February 24, 2002.* A mammogram report dated September 15, 2004 showed no evidence of malignancy. *Report, Northern Arizona Radiology, P.C., dated September 15, 2004.* A report dated October 11, 2004 notes that no sonographic abnormality is seen to correspond to the palpable lump in the left breast, and a hypoechoic 0.4 cm maximum diameter nodule or complex cyst is seen in the left upper outer quadrant which is not palpable and is most likely benign. [REDACTED], *Radiology Report, Northern Arizona Radiology, P.C., dated October 11, 2004.* Medical notes dated December 2000 through February 2001 show that the applicant suffered from anxiety and depression for which she received prescription medication. *Medical notes, North Country Community Health Center, dated January 2, 2001, January 5, 2001, and February 17, 2001; phone message notes documenting refill for depression medication, December 14, 2000.* The AAO observes that the record does not demonstrate that the applicant's spouse received any type of counseling or on-going treatment for her depression, nor does she appear to have any medical condition that could not be treated in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse's entire family lives in the United States. *Attorney's brief.* She has lived in the United States for over nineteen years. *Id.* Counsel states that if the applicant's spouse is separated from the applicant, the result will be poverty, more depression, illness, and dependence. *Id.* The financial burden of maintaining two households requires the applicant's spouse to get another job in addition to running her clothing store to be able to survive. *Id.* Without the applicant's role as the primary income earner, the burden of providing for the care and well-being of the family would shift entirely to the applicant's spouse. *Id.* While the AAO recognizes the difficulties of caring for several children, it notes that there is nothing in the record to demonstrate that the applicant would be unable to sustain himself and contribute to his family's financial well-being from a location outside of the United States. Counsel also asserts that if the applicant's spouse remains in the United States with the children, their family structure will be destroyed. *Id.* 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, her situation, if

she 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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 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.