

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

A2

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA (SACRAMENTO)

Date:

DEC 01 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 Nicaragua 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 admission into the United States by fraud or willful misrepresentation. The applicant has a lawful permanent resident mother and is married to a U.S. citizen. He 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 mother and 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 April 11, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relatives necessary for a waiver under 212(i) of the Act. *Form I-290B, dated April 28, 2005.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a country condition report on Nicaragua; Westward Life Insurance Company disability report, dated July 31, 2003; Sacramento Housing and Redevelopment Agency Disabled Verification, dated October 3, 2002; Decision, Social Security Administration, Office of Hearings and Appeals, dated May 29, 2003; earnings statements for the applicant's spouse, 2004; employment letter for the applicant's spouse, dated May 26, 2004; tax statements for the applicant's spouse, 2001-2003; a statement from the applicant's spouse, dated July 14, 2004; bank statements for the applicant and his spouse; and letters of support from friends. 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 his adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact. *Form I-485. See Form I-94 dated August 28, 2001 with false name.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship 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 relevant hardship in the present case is hardship suffered by the applicant's mother and 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 mother or spouse must be established in the event that she resides in Nicaragua 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 mother travels with the applicant to Nicaragua, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother is a native of Nicaragua. *See Lawful Permanent Resident card for the applicant's mother.* The record does not address what, if any, family ties the applicant's mother has in Nicaragua. The applicant's mother is permanently disabled and cannot walk due to a diagnosis of plantar fasciitis. *Westward Life Insurance Company, Attending Physician's Supplementary Statement, [REDACTED] Primary Care Center, Sacramento County Health Department, dated July 31, 2003.* The applicant's mother underwent surgery to treat her condition; however, the surgery failed. *Id.* The applicant's mother also underwent physical therapy and cortisone injections to her heels; however, these treatments did not alleviate her condition. *Decision, Social Security Administration, Office of Hearings and Appeals, dated May 29, 2003.* An Administrative Law Judge of the Social Security Administration found that the applicant's mother's medical evidence established that she had severe impairments and classified her as having a disability for a continuous period of not less than 12 months. *Id.* Country condition reports note that discrimination in Nicaragua exists against persons with disabilities in employment, education, access to health care, and in the provision of state services. *Nicaragua, Country Reports on Human Rights Practices – 2004, U.S. Dept. of State, dated February 28, 2005.* The National Council for Rehabilitation of the Ministry of Health addresses the needs of the estimated 535,000 citizens with some type of disability, few of whom

received medical treatment. *Id.* Through its clinics and hospitals, the Government provided care to war veterans and other disabled persons, but the quality of care was generally poor. *Id.* The law obligates companies to contract persons with disabilities, not to let such disabilities affect salaries, and to consider disabled persons equal to other workers. *Id.* However, this law rarely was enforced. *Id.* When looking at the aforementioned factors, the AAO finds that the applicant demonstrated extreme hardship to his mother if she were to reside in Nicaragua.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. As previously mentioned, the applicant's mother suffers from a permanent disability that limits her ability to walk. *Westward Life Insurance Company, Attending Physician's Supplementary Statement, [REDACTED] Primary Care Center, Sacramento County Health Department, dated July 31, 2003.* While the applicant is supporting his disabled mother as well as his two children in Nicaragua (*Attorney's brief*), the AAO observes there is nothing in the record that shows the applicant would be unable to contribute to his family's financial well-being from a location outside of the United States. The applicant's spouse stated that the applicant's mother relies upon her and the applicant physically and emotionally. *Statement by the applicant's spouse, dated July 14, 2004.* While the applicant's spouse stated that she would not be able to assist the applicant's mother without the applicant, and that the applicant's mother relies upon her and the applicant physically and emotionally (*Statement by the applicant's spouse, dated July 14, 2004*), the record fails to indicate exactly how the applicant and his spouse help his mother. The AAO notes that the applicant's mother lives separately from the applicant and his family. *Form I-601.* The record fails to clarify how much the applicant's mother depends upon the applicant and for what she is dependent. The record also fails to state whether there are other family members, apart from the applicant and his spouse, who assist the applicant's mother. As the record is deficient in these aspects, the AAO finds that the applicant has not demonstrated that his mother would suffer extreme hardship if she were to reside in the United States.

If the applicant's spouse travels with the applicant to Nicaragua, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A for the applicant's spouse.* She does not have any family ties to Nicaragua. *Attorney's brief.* She has never lived in any other country outside of the United States, and she does not read or write in Spanish. *Id.* The applicant's spouse does not have a high educational background, and counsel asserts that she and the applicant will most likely be unemployed if they were to live in Nicaragua. *Id.* As previously stated, there is nothing in the record that shows the applicant and his spouse would be unable to contribute to their own and their family's financial well-being from a location outside of the United States. The record does not address any health conditions that the applicant's spouse may have. 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 Nicaragua.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. Counsel asserts that if the applicant's spouse remains in the United States, she will be burdened with providing for the whole family. *Attorney's brief.* She will be put in a situation where she will be the sole provider for the applicant, his children, and his disabled mother. *Id.* As noted above, there is nothing in the record that shows the applicant would be unable to contribute to his family's financial well-being from a location outside of the United States. The applicant's spouse stated she would be devastated emotionally if she were to be separated from the applicant. *Statement by the applicant's spouse, dated July*

14, 2004. 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.