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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H-2

PUBLIC COPY

[REDACTED]

FILE:

Office: LOS ANGELES, CA (SANTA ANA)

Date: JUL 05 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.

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, Los Angeles, California. The matter 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 determined to be inadmissible to the United States pursuant to 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States 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 spouse 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 January 20, 2005.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship in the absence of the applicant owing to her inability to financially support the family on her own earnings. *Form I-290B*, dated February 17, 2005. In support of these assertions, counsel submits a brief; a declaration of the applicant; a declaration of the applicant's spouse; copies of tax and financial documents for the applicant and his spouse; copies of the United States birth certificates of the applicant's two children and a copy of the marriage certificate of the applicant and his spouse with English translation. The entire record was reviewed and considered in rendering a decision on the applicant's 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.

Section 212(i) of the Act provides:

- (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, on or about December 6, 1995, the applicant presented a resident alien card issued to another individual to Government officials in an attempt to obtain admission to the United States.

Counsel contends that the decision of the district director is contrary to precedent and incompletely cites *Perez-Gonzales v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004) to support the assertion that the misrepresentation committed in the instant application is not as severe as the failure to reveal a prior conviction evidenced in

Perez-Gonzales. Respondent's Appellate Brief, dated March 11, 2005. The AAO finds the assertion of counsel to be unpersuasive based on the fact that the cited case is distinguishable from the instant application. The applicant in *Perez-Gonzales* sought approval of a Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) as opposed to a Form I-601 application for a waiver of inadmissibility, and the applicant in *Perez-Gonzales* made a misrepresentation by omission while in the instant application, the applicant presented a document belonging to another individual. Counsel fails to clearly articulate the applicability of *Perez-Gonzales* to the instant application.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 (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.

The applicant's spouse contends that she and the couple's children will be unable to subsist in the absence of the applicant. Declaration of [REDACTED] Respondent's Wife, in Support to Respondent's Appellate Brief, dated March 7, 2005. The applicant's spouse states that she would need to alter her living situation in the absence of the applicant. *Id.* ("I would also be forced to move in a one-bedroom apartment or move in with another family as I would not be able to afford our current rent."). She further indicates that she would need to resort to public assistance if the applicant was not able to assist the family. *Id.* While the AAO sympathizes with the plight of the applicant's spouse, the record fails to establish that the applicant will be unable to contribute to the financial maintenance of his family from a location outside of the United States. Moreover, a change in living situation standing alone does not form the basis for a finding of extreme hardship. The record reflects that the applicant's spouse earns almost as much in income as the applicant. See 2001 W-2 Forms for [REDACTED] and [REDACTED]. The record does not establish that, prior to the applicant's illegal entry into the United States, the applicant's spouse was unable to support herself financially.

In addition, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address 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 acknowledges that the record contains a declaration of the applicant, but finds that the declaration merely details the applicant's immigration situation and fails to offer any assertion regarding extreme hardship imposed on his lawful permanent resident spouse as a result of his inadmissibility. *Declaration of [REDACTED] in Support of Respondent's Brief*, dated March 7, 2005. The submitted declaration of the applicant states that his family will be destroyed if the waiver is not granted and that this destruction constitutes "perhaps a life threatening event", but fails to offer concrete, particularized assertions of the hardship that will be suffered through the submission of documentation. *Id.* at 4.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her 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 spouse 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 he merits a waiver as a matter of discretion.

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.