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U.S. Citizenship  
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#2

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FILE:

Office: LOS ANGELES

Date: JUL 07 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: Self-represented

### 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 District Director, Los Angeles, California, denied the waiver application, and it 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 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 attempting to procure admission to the United States by fraud. The applicant is the son of a naturalized U.S. citizen and the father of two U.S. citizen children. 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 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005.

The record reflects that, on January 15, 1991, the applicant attempted to enter the United States at the Nogales, Arizona, Port of Entry, by presenting a fraudulent U.S. Birth Certificate in his name. The applicant was apprehended by immigration officers at the Port of Entry and was charged with attempted entry by falsely claiming U.S. citizenship pursuant to 18 U.S.C. § 911. However, on January 15, 1991, a Petition for Alien Relative (Form I-130) filed by the applicant's lawful permanent resident mother was approved and no further actions were taken to remove the applicant from the United States. On September 23, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on September 30, 2003. The applicant admitted that he had tried to enter the United States using a fraudulent U.S. birth certificate.

On November 17, 2003, the applicant filed the Form I-601 with no documentation to support his claim that his family members would suffer extreme hardship upon his deportation.

On appeal, the applicant asserts that he qualifies for a waiver of inadmissibility because he has a U.S. citizen mother and two U.S. citizen children. *Form I-290B*, dated February 17, 2005. In support of this assertion, the applicant submitted the above-referenced Form I-290B, a copy of the applicant's mother's Naturalization Certificate and copies of the applicant's children's U.S. birth certificates. The entire record was reviewed and considered in rendering a decision on the 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.
- (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 . . . is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. In analyzing whether an applicant’s pre-IIRIRA false claim to U.S. citizenship constitutes an action that render the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, the Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, has issued guidance:

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the Documented False Claim to Citizenship by a Mexican Alien (Form G-329) contained in the record and the applicant’s admitted use of a fraudulent U.S. birth certificate to attempt to enter the United States in 1991. The applicant does not contest the district director’s finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that the applicant’s mother, [REDACTED] is a native of Mexico who became a lawful permanent resident of the United States in 1989 and a naturalized U.S. citizen in 2004. The applicant has an 11-year old son and a ten-year old son who are both U.S. citizens by birth. The applicant is in his 30’s, [REDACTED] is in her 50’s, and there is no indication that [REDACTED] has any health concerns.

The applicant asserts that he qualifies for a waiver of the grounds of inadmissibility because he has two U.S. citizen children. In the Form I-290B, the applicant stated “I support . . . my child’s birth.” The Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien’s children as a factor in assessing hardship waivers under section 212(i) of the Act. It is noted that Congress *specifically* did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant’s U.S. citizen children will not be considered in this decision, except as it may affect the applicant’s mother, the only qualifying relative.

The applicant asserts that he qualifies for a waiver of the grounds of inadmissibility because he has a mother who is a U.S. citizen. In the Form I-290B, the applicant stated “I support my mother naturalization.” There are no tax returns, payment slips or W-2s indicating what the applicant’s income is or what are the expenses for the household. The record reflects that, in 2002, [REDACTED] resided with her husband who provided \$6650 to household income, while [REDACTED] earned \$14, 134. There is no evidence in the record that the applicant provides his mother with any financial support or that the applicant’s children reside with him and [REDACTED]

Financial records indicate that \_\_\_\_\_ has never claimed the applicant's children as dependents. Documentation in the record reflects that the applicant's children's mother is \_\_\_\_\_ who resides in the United States and is not married to the applicant. There is no evidence in the record to suggest that \_\_\_\_\_ is incapable of providing financial and emotional support to the applicant's children or that the applicant's children would be dependent upon \_\_\_\_\_. The record shows that, even without assistance from the applicant, \_\_\_\_\_ has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that \_\_\_\_\_ suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

The applicant does not assert that \_\_\_\_\_ would suffer hardship if she returned to Mexico with him. The AAO is, therefore, unable to find that \_\_\_\_\_ would experience hardship should she choose to join the applicant in Mexico. Additionally, the AAO notes that, as U.S. citizens, the applicant's mother and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that \_\_\_\_\_ will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen mother as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.