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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

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **JUL 11 2006**

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (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, Los Angeles, 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 sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(ii), for having been convicted of a crime involving moral turpitude and for having falsely claimed to be a United States citizen on or about October 3, 1988. The applicant is the spouse of a naturalized United States citizen and the parent of United States citizens. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), so that he may 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 further found that the nature of the crime for which the applicant was convicted was particularly serious. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 5, 2005.

On appeal, counsel requests that the record be supplemented on the basis that the administrative record was so bare that it prevented effective judicial review. In addition, counsel contends that Citizenship and Immigration Services (CIS) did not fully adjudicate the issues presented by failing to adjudicate the section 212(h) part of the application. *Form I-290B*, dated February 3, 2005.

In support of these assertions, counsel submits a brief; copies of identity documents for the applicant's spouse; a copy of the marriage certificate of the applicant and his spouse; copies of court documents relating to the criminal history of the applicant; declarations of the applicant's spouse and children; documentation evidencing the applicant's compliance with his criminal sentencing; copies of identity documents for the applicant's children; copies of tax documents for the applicant and his spouse; copies of identity documents for extended family members of the applicant and his spouse and documentation evidencing technical achievement by the applicant in his vocation. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
  - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

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:

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 October 3, 1988, the applicant claimed to be a citizen of the United States to immigration officials in an attempt to procure admission into the United States.

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. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provisions afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

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 record reflects that, on July 22, 2000, the applicant was convicted of Corporal Injury to Spouse/Cohabitant/Child's Parent in the Municipal Court of Rio Hondo Judicial District, County of Los Angeles, California. Additional convictions of the applicant for Theft, Receiving Stolen Property and Stolen Vehicle Without Owner's Consent are detailed in the decision of the district director.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. 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. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under sections 212(h) and (i) of the Act. 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 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.

Counsel contends that extreme hardship would be imposed on the applicant's spouse and children as a result of relocating to Mexico in order to remain with the applicant. *See Brief in Support of Appeal*, dated March 2, 2005. The applicant's spouse states that she has resided in the United States for 33 years and that she could not emotionally or financially survive in Mexico. The applicant's spouse indicates that her family resides in the United States and that she is close to her relatives. *Declaration of* [REDACTED], dated February 26, 2005. The applicant's spouse explains that economic conditions in Mexico are poor and that she is fearful that her children would not survive such a drastic change in their lives. *Id.* at 6-7. The applicant's spouse indicates that the couple's daughter does not speak Spanish well and would be afraid to live in Mexico. *Id.*

*See also Declaration of* [REDACTED] dated February 26, 2005. She states that the family would live in severe poverty in Mexico as they would not be able to find jobs to provide for their basic needs. *Declaration of* [REDACTED] at 6. The AAO notes that the record fails to offer substantiation for the claims of the applicant's spouse regarding country conditions in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In the absence of substantiating documentation, the AAO is unable to render a finding that exposure to country conditions in Mexico rise to the level of extreme hardship.

Moreover, the record fails to establish that extreme hardship would be imposed on the applicant's spouse and children as a result of remaining in the United States in the absence of the applicant in order to maintain proximity to extended family members and residence in their country of citizenship with access to employment. Counsel asserts that the applicant's spouse and children would suffer emotionally and financially as a result of separation from the applicant. *See Brief in Support of Appeal*. The applicant's spouse states that the applicant is a very important part of her life and that he spends a lot of time with their children including the couple's daughter, the applicant's son from a prior relationship and the son of the applicant's spouse from a prior relationship. *Declaration of* [REDACTED] at 1, 3. She indicates that although the applicant was convicted of a domestic violence crime in 2000, the couple has been working through their issues and has strengthened their relationship as a result. *Id.* at 4-5. She further asserts that she is concerned about the children and that being separated from the applicant will emotionally damage them. *Id.* at 7. She states that she will be unable to support herself and the couple's children financially in the absence of the applicant. *Id.* at 5. Although any emotional or psychological suffering experienced by the applicant's spouse and children is regrettable, the statements of the applicant's spouse do not reflect a level of hardship above or beyond the level of emotional hardship commonly experienced as the result of separation from a loved one. Although the applicant's spouse indicates that separation from the applicant will impose financial hardship on the family, the record reveals that all but one of the children of the applicant and her spouse are over the age of majority. The record fails to establish that the adult children of the applicant and his spouse are unable to financially and physically care for themselves. Moreover, the record fails to establish that the applicant's spouse and adult children are unable to coordinate their efforts in order to enable the applicant's spouse to continue her employment and academic pursuits. *Id.* ("I would be forced to quit school and work all the time. If I had to work that much, no one would be available to care for our children...").

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 and children will likely endure hardship as a result of separation from the applicant or as a result of relocating to Mexico in order to remain with the applicant. However, their 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 and children 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 sections 212(h) and (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.