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U.S. Citizenship
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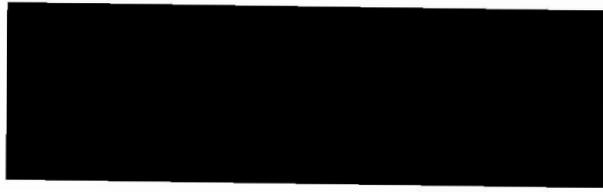


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FILE: [REDACTED] Office: PHOENIX DISTRICT OFFICE Date: MAY 19 2006

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)



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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, denied the waiver application. 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 found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant attempted to gain admission using his cousin's border crossing card on July 16, 1992, when he was seventeen years old. He is seeking a waiver of inadmissibility so that he may live in the United States with his U.S. citizen wife, three U.S. citizen children, U.S. citizen mother and lawful permanent resident father.

The district director denied the application for waiver, finding that the applicant failed to establish extreme hardship to his U.S. citizen spouse, U.S. citizen mother or lawful resident father as required by INA § 212(i), 8 U.S.C. § 1182(i). *Decision of District Director* (July 14, 2004).

On appeal, counsel contends that the applicant's wife and parents would suffer extreme hardship if the applicant were removed. *Brief in Support of Appeal*, September 7, 2004.

The entire record has been reviewed and considered in making this decision.

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.

The record indicates that the applicant presented a border crossing card belonging to his cousin in an attempt to gain admission to the United States. He is therefore inadmissible under 212(a)(6)(C).

Section 212(i)(1) 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should favorably exercise his discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, in order for the applicant to qualify for a section 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse, U.S. citizen mother or lawful permanent resident father. 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. Hardship to the applicant's U.S. citizen children will therefore not be considered in this decision.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) identified those factors relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

Counsel states that the director misapplied the *Cervantes-Gonzalez* factors. Counsel points out that the applicant possesses more than the requisite number of qualifying relatives and that his spouse has no family ties outside the United States. Counsel contends that the director did not give appropriate weight to the family ties of the applicant's wife in the United States or the absence of such ties in Mexico. *Brief*, at 3-4. In identifying factors relevant to determining extreme hardship in *Cervantes-Gonzalez*, the BIA neither assigned a particular weight to the individual factors nor stated that the presence of certain factors in a qualifying relative would establish extreme hardship. It simply listed factors that are relevant to the determination of extreme hardship.

The AAO does take note of the fact that the applicant's wife is a United States citizen who has lived in the United States for twenty-seven years (since she was two years old). She has numerous ties to this country and she has no family in Mexico. There is no question that these factors would make it very difficult for the applicant's wife to relocate to Mexico with her husband. It is further noted that the poverty and unemployment that exist in Mexico would make it difficult for a woman who was raised and educated in the United States to secure gainful employment in Mexico. Without employment, without family or friends to support her, the applicant's wife could find life very difficult in Mexico.

However, as a United States citizen the applicant's wife is not required to live in Mexico. Counsel writes that the director, in mentioning that the applicant's wife is not required to live in Mexico with her husband, "is callously disregarding that one of the central purposes of the I-601 waiver is to provide for the unification of families." *Brief*, at 3. The AAO does not agree. The director is applying the law as established by Congress. The statutory language that requires a showing of "extreme hardship" compels adjudicators to examine

whether the situation of the qualifying family member would be extreme, unusual or out of the ordinary if the applicant were denied the waiver. 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. These cases did not minimize the disruption and difficulties that separation or relocation cause to a family when a family member is found inadmissible. Instead, the cases recognize that the consequences of removal generally are quite harsh, but to show extreme hardship an applicant must demonstrate that the consequences of his removal will be unusually harsh to a qualifying family member. In the instant case, the applicant must therefore show that the emotional and financial loss that his wife and/or parents would suffer if he were removed would be extreme or out of the ordinary as compared to the loss experienced by other families in similar situations.

The record shows that the separation of the applicant from his parents would be difficult, but there has been no showing of extreme hardship. The applicant's parents do not live with him. There has been no specific showing that they rely on the applicant's physical, emotional or financial support to survive. Other family members are also present in the United States. Separation from the applicant would no doubt be difficult for his parents but the record does not show that separation from him would cause hardship that is unique or extreme.

The applicant's wife submitted a statement indicating her husband is a good husband and father. He supports the family financially and emotionally. He is involved in the lives of his children and concerned about their schooling and care. He has held a steady job with the same company for nine years. He has been with his wife since 1993 and married since 1999. Separation would be emotionally devastating to his wife and children. *Affidavit of* [REDACTED] December 2, 2002, supported by affidavits from other family members. In 2001, W-2 statements submitted with the application for waiver indicate that the applicant earned \$33,350.00 and his wife earned \$8840.00. The applicant has been the principle earner for his family. He and his wife live in their own house and have been making payments on a mortgage since December 1997. Whether the applicant's family joined him in Mexico or stayed in the United States, the applicant's removal would likely have a strong negative financial impact upon the applicant's wife. The record also includes numerous affidavits from family and friends attesting to the degree of support that the applicant provides to his family and the emotional and financial upheaval that would result from his removal. The applicant's family would face great difficulty finding work, schooling, medical care, housing that they could afford and the support network of family and friends in Mexico that would be comparable to what they have in the United States.

The record shows that the applicant's removal would make things very difficult for his wife, whether she joined him in Mexico or stayed in the United States. However, while she relies on her husband emotionally,

there has been no medical or psychological showing that she would be unable to endure separation. While she relies on him financially, the record does not indicate that she is incapable of supporting the family in the United States, or that her husband and she would be unable to survive in Mexico. While not minimizing the difficulties that the applicant's wife would endure if the applicant were removed, there has been no showing that her situation is unusual or different in any significant degree from the situation that any spouse would face if the other spouse were removed.

A review of the record in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.