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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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#12

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: NOV 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, Los Angeles, California. A subsequent appeal was rejected as untimely by the Administrative Appeals Office (AAO). The AAO will sua sponte reopen the proceeding. 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 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 is married to a U.S. citizen 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 her 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 May 24, 2004.*

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 her qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated June 23, 2004.*<sup>1</sup>

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, letters from the applicant's spouse; letters of support from the applicant's friends; earnings statements for the applicant's spouse; an employment letter for the applicant's spouse; tax statements for the applicant and her spouse; a decision from the immigration judge, dated March 1, 1996; and a Form I-213. 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

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<sup>1</sup> The AAO initially rejected the applicant's appeal dated June 23, 2004 as having been untimely filed. Counsel for the applicant correctly asserted that the original date of May 5, 2004 on the District Director's denial of the Form I-601 had been crossed-out and re-stamped with a date of May 24, 2004. The AAO notes that at the time of its initial decision rejecting the applicant's appeal, the record only contained the May 5, 2004 denial letter and not the corrected version of May 24, 2004. The AAO based its dismissal upon the May 5, 2004 denial letter, which subsequently proved incorrect. The AAO will now consider the applicant's June 23, 2004 appeal to have been timely filed.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that on February 22, 1996, the applicant attempted to enter the United States using a border crossing card issued under a different name. *Form I-213*. The applicant was placed into exclusion proceedings where an immigration judge terminated her case. *Decision of the immigration judge, dated March 1, 1996*. The AAO notes that in addition to using a false name to attempt to enter the United States, the applicant used a different alias during her immigration court proceedings. *Decision of the immigration judge, dated March 1, 1996*. The applicant returned to Mexico and re-entered the United States without inspection on March 15, 1996. *Form I-485*. 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's children or that the applicant herself 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) except in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B) of the Act, which both relate to petitions granted to battered spouses. The applicant does not fall into that category. The AAO notes that counsel for the applicant erred in stating that the applicant's U.S. citizen son is a qualifying relative. The only relevant hardship in the present case is hardship suffered by the applicant's 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 spouse must be established in the event that he resides in Mexico or the United States, as he 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 spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States; however, his parents were born in Mexico and continue to reside there. *Form G-325A for the applicant's spouse*. The applicant's spouse has worked as an assistant manager for various restaurants, has cleaned houses, and has worked in shipping and handling. *Id.*; *Letter from the applicant's spouse, dated June 12, 2004*. There is nothing in the record that shows the applicant's spouse would be unable to find employment in Mexico, particularly when he possesses transferable job skills. The record does not address any significant 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 her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant is a major source of income for her family. *Attorney's brief*. Counsel asserts that the financial strain placed on the family should the applicant be separated from her spouse would amount to extreme hardship. *Attorney's brief*. While the AAO acknowledges the difficulty of the situation, there is nothing in the record to demonstrate that the applicant would be unable to contribute to the financial well-being of her family from a location outside of the United States. The applicant and her spouse have a very strong and loving relationship. *Attorney's brief*. They love each other very much and it would be devastating to break up their family. *Letter from the applicant's spouse, dated June 12, 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, his situation, if he 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 her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.