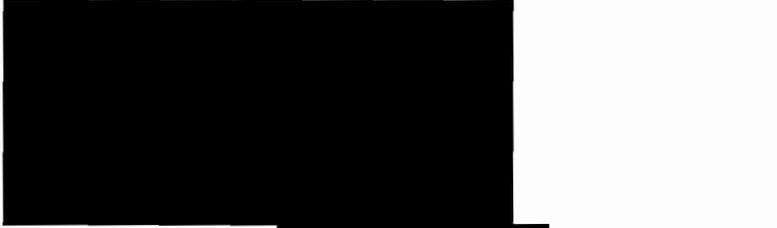


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U.S. Citizenship
and Immigration
Services



H2

FILE:

Office: SAN FRANCISCO (FRESNO, CA)

Date: NOV 14 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, 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 section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident 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 lawful permanent resident spouse. The AAO notes that the District Director failed to address that the applicant is also inadmissible under current section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

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 April 18, 2003.*

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver. *Form I-290B and attached statement, dated May 8, 2003.*

In support of these assertions, the record includes, but is not limited to, a statement from the applicant, dated May 7, 2003; a letter from the applicant's daughter; a register of actions regarding the applicant's criminal activity dated September 24, 1986 through February 28, 1992; a marriage certificate; a birth certificate from the United States for the applicant's daughter; FBI records; a criminal complaint dated July 28, 1986; a court record, Justice Court, Coalinga Judicial District, County of Fresno, State of California, dated September 23, 1986; a guilty plea, Justice Court, Coalinga Judicial District, County of Fresno, State of California, dated September 22, 1986; an arrest record dated August 18, 1986; a sentencing report, Superior Court of the State of California, dated October 20, 1986; a criminal report, dated October 22, 1986; an expungement petition and order, Superior Court for the State of California, dated February 28, 1992; an Order to Show Cause, dated September 26, 1984; Forms I-213, dated May 16, 1977 and April 15, 1982; an order of deportation, dated November 18, 1988; and a written decision, Executive Office of Immigration Review, dated October 25, 1988. 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.
- (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 (including section 274A) or any other Federal or State law 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 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 while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or

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 . . .

The record reflects that on May 13, 1966 the applicant attempted to gain admission into the United States by falsely claiming that he was a citizen of the United States. *Form I-485; statement by the applicant, dated May 7, 2003; FBI report.* Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible. The applicant is eligible for a waiver of this misrepresentation because the incident occurred prior to September 30, 1996.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes 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 himself 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). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's lawful permanent resident 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 qualifying relative must be established in the event that she resides in Mexico or the United States, as she 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 his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico, and she and the applicant were married in Mexico in 1948. *Form G-325A for the applicant.* The applicant's entire family, including numerous children, resides in the United States. *Statement from the applicant, dated May 7, 2003; See Also letter from the applicant's daughter.* The record does not include any other information regarding hardship such as additional family ties in Mexico and the United States that the applicant's spouse may have, the financial impact upon the applicant's spouse if she were to go to Mexico, and any significant health condition that the applicant's spouse may have and whether treatment would be available in Mexico. When looking at the aforementioned factors included in the record, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's family lives in the United States. *Statement from the applicant, dated May 7, 2003.* Although the record does not address how the applicant's spouse would be affected if she remained in the United States, the AAO recognizes that the separation of one from

her spouse after 58 years of marriage is emotionally difficult. While separation from loved family members is not easy, 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, her situation, if she 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 his spouse if she were to reside in the United States.

The AAO acknowledges that the applicant is also inadmissible under current section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having committed a crime involving moral turpitude, as the applicant was convicted in 1986 of Assault with a Deadly Weapon. *See court record, Justice Court, Coalinga Judicial District, County of Fresno, State of California, dated September 23, 1986.; See Also Matter of Logan*, 17 I&N Dec. 367 (BIA 1980) *noting that assault with a deadly weapon is a crime involving moral turpitude*. To qualify for a section 212(h) waiver the applicant does not have to establish extreme hardship to a qualifying relative, as his crime occurred over 15 years ago. He only has to show that he is not a national security risk and that he has been rehabilitated. The AAO notes that having found the applicant statutorily ineligible for relief under 212(a)(6)(C), no purpose would be served in discussing whether he merits a waiver under section 212(h) or as a matter of discretion under section 212(i).

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.