

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

hr

PUBLIC COPY



FILE:

Office: LOS ANGELES, CA

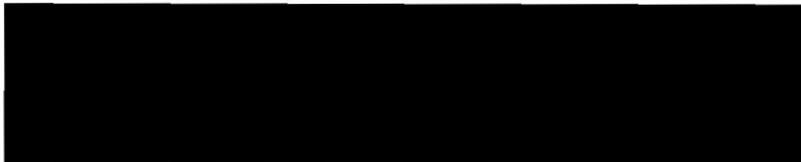
Date: OCT 03 2006

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:



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, CA, 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 (U.S.) 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 on November 10, 1991 and December 6, 1993. The applicant is married to a U.S. citizen and has three U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record do not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated October 15, 2004.

On appeal, counsel disputes the claim that the applicant committed fraud on December 6, 1993. He also asserts that the applicant's application meets the standards required for extreme hardship by the circumstances of his case being of great, actual, or prospective injury and that the combined factors in his case carry much more extreme impacts to warrant approval of his application. *Counsel's Appeal's Brief*, dated December 6, 2004.

The AAO notes that the applicant's fingerprint record shows only one charge of falsely claiming U.S. citizenship on November 10, 1991 in an attempt to gain entry into the United States. However, the record also includes a Record of Deportable Alien (Form I-213) for the December 6, 1993 incident where at the [REDACTED] the applicant claimed U.S. citizenship by stating he was born in San Diego, CA. Therefore, the AAO will consider both incidents of fraud in reviewing the applicant's waiver application.

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 . . . 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 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 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. Because the applicant's false claim to U.S. citizenship was made before September 30, 1996, he is eligible to apply for a waiver pursuant to section 212(i) of the Act.

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. Hardship the alien himself experiences or his children experience due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. Counsel asserts in his brief that the applicant's spouse will not relocate to Mexico with the applicant. In the spouse's declaration she does not address the possibility of relocating to Mexico with the applicant and the hardship she may suffer as a result of this relocation. In addition, no supporting documents were submitted to support a finding that relocating to Mexico would cause the applicant's spouse extreme hardship. The AAO notes that the record includes a letter from the applicant's spouse's doctor who is located in Tijuana, Mexico and states that she has appointments in Mexico every two months. This evidence would support a finding that relocating to Mexico would not cause the applicant's spouse much hardship. Therefore, the AAO finds that the current application does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. In his brief, Counsel states that the applicant's removal from the United States would cause economic detriment to the applicant's spouse. Counsel states that the applicant's spouse will not be able to care for her children on her own because she requires continuous medical attention. The applicant's spouse states in her declaration that she has always worked outside the home until four years ago when she decided to stay home and take care of her children. The record indicates that the applicant's three children are 18, 15 and two years old. The applicant did not submit any documentation showing that his spouse could not return to work and support her family nor did he submit financial documentation to show their family expenses and income. The applicant's spouse also states that she is currently suffering physical and emotional trauma. She states that she is depressed and cries all the time and cannot deal with her children's depression. However, the applicant did not submit any evidence establishing the extent of the family's emotional problems and whether they were seeking treatment for these problems. The applicant's spouse also states that her doctor has diagnosed her with hypertension and high cholesterol. The applicant did submit a letter from his spouse's doctor in Tijuana, Mexico confirming the spouse's physical ailments. The letter does not describe how these ailments require the applicant's spouse to have the everyday care and attention of the applicant. There is no evidence establishing the effects these medical, emotional and financial problems would have on the spouse's ability to maintain her wellbeing. The AAO recognizes that the applicant's spouse will endure some hardship as a result of separation from the applicant. However, the current record does not establish that the hardship suffered by the spouse amounts to extreme hardship.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 section 212(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.