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IN RE:



PETITION: 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 PETITIONER:



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, 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 pursuant to 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 to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the daughter of a lawful permanent resident of the United States. She 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 and mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on qualifying relatives above the normal economic and social disruptions involved in the removal of a family member. The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the District Director*, dated April 21, 2004.

On appeal, counsel states that the applicant was a minor at the time she presented the fraudulent document to immigration authorities and should not have been required to submit a waiver application. Counsel also states that the applicant's due process rights were violated during the questioning conducted at the port of entry and that the director did not afford the applicant a full and fair consideration of her application. *Counsel's Appeals Brief*, dated June 17, 2004.

The AAO notes that violation of the applicant's due process rights is a constitutional issue and constitutional issues are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision. The AAO also notes that the Act does not provide a statutory exception for applicants whose misrepresentation occurred while they were under the age of eighteen. Furthermore, counsel did not provide any case law to support his assertions that the applicant does not have to submit a waiver application.

The record reflects that on June 16, 1991, the applicant applied for admission to the United States by presenting a U.S. birth certificate belonging to another person.

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:

- (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 occurred before September 30, 1996, she is eligible for a section 212(i) waiver.

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 herself experiences or her daughter experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or mother. 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 and/or mother must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are 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 reviewing this case.

The applicant's spouse submitted a declaration stating that he will suffer emotionally and financially if his wife is removed from the United States. He states that he needs the applicant's emotional and moral support in raising their eight-year old daughter. He states that he has resided in the United States for thirteen years and does not address the possibility of relocating to Mexico with the applicant.

The applicant's spouse states that he would also suffer financially if the applicant were removed from the United States. In his brief, counsel states that the applicant earns \$10.00 an hour and contributes to the family income. The applicant's spouse states that his finances would be severely strained if the applicant were removed because he would be forced to pay for two households, one in Mexico and one in the United States. He also asserts that because of these financial strains he would not be able to visit the applicant causing more emotional hardship. The applicant's spouse submitted no evidence concerning the specifics of their family's expenses, any financial documents, or the extent of his emotional suffering. In addition, the applicant's spouse made no assertions regarding the hardship he may face if he relocated to Mexico with the applicant.

The applicant's mother also submitted a declaration. She states that she would suffer emotionally and financially if the applicant were removed from the United States. She states that the applicant helps to pay half of her mortgage payment and that she would suffer emotionally because of separation. Again, no evidence was submitted to support the claims involving financial and emotional hardship. Also, no assertions were made regarding the possible hardships to the applicant's mother if she relocated to Mexico with the applicant. The AAO recognizes that the applicant's spouse and mother will endure hardships as a result of separating from the applicant. However, the current record, shows their situation as typical to individuals separated as a result of removal and does not rise to the level of 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 she 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.