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U.S. Citizenship  
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FILE:

Office: LOS ANGELES, CA

Date: SEP 08 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.

  
for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, 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)(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 November 1, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in not analyzing extreme hardship to the applicant's U.S. citizen children, in not taking into account the age of the applicant when the misrepresentation occurred, in not conducting a discretionary analysis, and 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 November 26, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, the applicant's spouse's declaration dated December 27, 2004; a letter from the applicant's church, dated December 17, 2004; a letter from the applicant's friends [REDACTED] and [REDACTED] dated December 19, 2004; the applicant's spouse's declaration dated August 21, 2001; a copy of the applicant's marriage certificate dated June 23, 1993; a copy of the applicant's spouse's naturalization certificate; copies of the U.S. birth certificates for the applicant's children; an employment letter for the applicant's spouse, dated May 28, 2001; an employment letter for the applicant, dated May 28, 2001; early childhood education program, pupil progress report for the applicant's son, January 2000 – May 2001; tax statements for the applicant and her spouse; and a copy of the applicant's Mexican birth certificate. 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

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 record reflects that the applicant admitted in her adjustment of status interview to procuring admission into the United States by fraud or willful misrepresentation of a material fact. *Form I-485*. Through counsel, the applicant admitted to gaining admission to the United States on or about August 26, 1993 with a counterfeit Alien Registration Card. *Attorney's brief, p.1*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The AAO observes that the District Director erred in finding that the applicant applied for a waiver under Section 212(h). **Section 212(h) waives certain criminal offenses. There is nothing in the record to demonstrate that the applicant has engaged in any type of criminal activity.** The applicant violated section 212(a)(6)(C) of the Act and is therefore eligible to seek a section 212(i) waiver. The AAO notes counsel's assertion that the presence of the applicant's U.S. citizen children in the United States supports a finding of extreme hardship rather than negates such a finding. *Attorney's brief, p.15*. While the AAO agrees that the applicant's U.S. citizen children do not negate a finding of extreme hardship, it notes that 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). 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).

The AAO acknowledges counsel's assertion that the District Director erred in not analyzing the applicant's age at the time of the offense. *Form I-290B*. The AAO notes that the applicant was 20 years old when she used a false resident alien card to gain admission to the United States; however, the AAO finds her age at the time of the misrepresentation to be irrelevant to her inadmissibility and her eligibility for a Form I-601 waiver.

*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 has family ties in the United States which include four U.S. citizen children. *See the applicant's spouse's declaration dated December 27, 2004, and birth certificates of the children.* The record does not address the applicant's spouse's family ties in Mexico, how he would be financially impacted if he departed the United States, nor any 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's spouse feels he cannot take care of his children alone. *Declaration from the applicant's spouse, dated December 27, 2004.* The children are dependent upon the applicant for most of their needs, including the applicant's son Andres who attends a Special Early Child Education Program for speech and language therapy. *Declaration from the applicant's spouse, dated August 21, 2001.* According to a pupil progress report, the applicant's son shows a very nice effort in class and continues to improve. *Early childhood education program, pupil progress report, January 2000 – May 2001.* The applicant's spouse stated that if the applicant is not with him, he will not be able to help his children with their education and this will cause him to suffer great emotional and physical trauma. *Declaration of the applicant's spouse, dated December 27, 2004.* The AAO notes that there is nothing in the record documenting the applicant's spouse's physical or mental health. 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. The applicant's spouse owns 25% of a restaurant. *Employment letter for the applicant's spouse, dated May 28, 2001.* The applicant's spouse stated that the applicant is the person in charge of the bookkeeping, and a very important member of the business. *Declaration of the applicant's spouse, dated August 21, 2001.* The AAO observes there is nothing in the record that shows the applicant would be unable to contribute to her spouse's and her own financial well-being from a location outside of the United States. 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.