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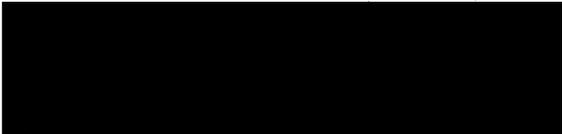
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: ATLANTA, GEORGIA

Date: APR 23 2007

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nicaragua 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 using an altered alien registration card (Form I-151) to enter the United States. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and two United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated September 1, 2004.

On appeal, the applicant claims that his wife would suffer extreme hardship if the applicant were removed from the United States, as he is the head of the household and is responsible for all the bills. *Form I-290B*, filed September 21, 2004. The applicant submits various documents in an attempt to establish that he is the head of the household.

The record includes, but is not limited to, a statement by the applicant, a letter from Dr. [REDACTED] regarding the applicant's wife's medical condition, birth certificates for the applicant's two United States citizen daughters, various tax documents and utility bills, and documents from the applicant's court proceedings before the Harlingen, Texas Immigration Court and the Board of Immigration Appeals (BIA). The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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...

In the present application, the record indicates that the applicant entered the United States at Brownsville, Texas, without inspection on March 16, 1985. On March 23, 1985, the applicant was apprehended by immigration officers in New Orleans, Louisiana. The applicant presented an altered Form I-151, under the name of [REDACTED] to the immigration officers and was placed into deportation proceedings. On May 30, 1985, the applicant filed an Application for Asylum (Form I-589). On August 28, 1985, an immigration judge denied the applicant's Form I-589 and ordered the applicant deported to Nicaragua. On September 11, 1985, the applicant appealed the immigration judge's decision to the BIA, which the BIA dismissed on December 9, 1988. On May 6, 1989, the applicant married [REDACTED], a lawful permanent resident. On August 11, 1993, the applicant filed a Form I-130, which was approved on October 4, 1993. On April 24, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 15, 1999, the applicant's wife became a naturalized United States citizen. On October 22, 2003, the applicant filed a Form I-601. On September 1, 2004, the District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 applicant asserts that his wife would face extreme hardship if she relocated to Nicaragua in order to remain with the applicant. The AAO notes that the applicant's wife is a native of Nicaragua and presumably speaks Spanish. The applicant's wife failed to submit a statement or affidavit addressing if she has any ties to Nicaragua and what hardships she would suffer if she returned to Nicaragua with her husband. Additionally, there is no evidence that the applicant's minor daughter could not adjust to the culture of Nicaragua. The applicant claims that he is the head of the household and "is responsible for all liabilities or accounts... [including] mortgages, utilities, doctors, [and his] children [sic] educations." *Form I-290B, supra*. The applicant submitted documents demonstrating that the applicant and his wife are responsible for various

bills. The AAO notes that the applicant's husband is a trained truck driver, who failed to provide any evidence that he could not obtain a job in Nicaragua that would support his family. The applicant states his wife has a "heart disease." *Id.* Dr. J. [REDACTED] states the applicant's wife "was seen on 07/02/2003, for a new heart murmur and chest pain. She has not had a previous history of any heart disease, and this is a new condition." *Letter from Dr. [REDACTED] Jacksonville Heart Center*, dated September 29, 2003. The AAO notes that Dr. [REDACTED] does not mention that the applicant's wife cannot work or travel to Nicaragua. The applicant submitted medical reports indicating his wife suffers from depression. However, there are no professional psychological evaluations for the AAO to review to determine what personal issues are affecting the applicant's wife's emotional and psychological wellbeing. Additionally, the applicant failed to provide any evidence that his wife could not receive medical treatment in Nicaragua for her depression and/or medical conditions. The applicant failed to establish extreme hardship to his spouse if she joins him in Nicaragua.

In addition, the applicant does not establish extreme hardship to his spouse if she remains in the United States. The applicant makes no claim that his wife cannot obtain employment in the United States. Additionally, two of the applicant's daughters are adults and there is no evidence that they could not help the applicant's wife with the household expenses. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Nicaragua, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his spouse if she remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 wife 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.

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(a)(9)(B) 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.