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U.S. Citizenship
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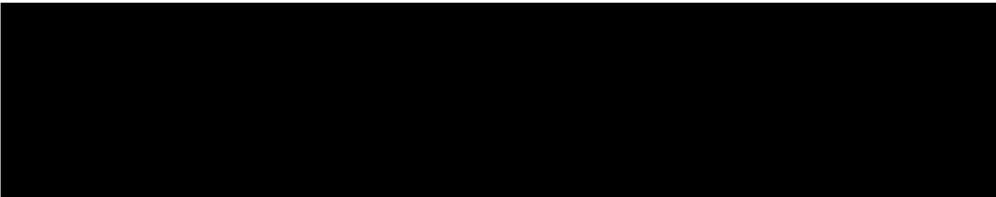
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IN RE:



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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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 falsely claiming United States citizenship so as to procure admission to the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated December 20, 2005.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

The record reflects that in 1993 the applicant attempted to enter the United States by presenting to an immigration inspector a City of Laredo, Texas, birth registration under the name [REDACTED]. A secondary inspection established that the applicant purchased the document for \$200. *Criminal Complaint, dated August 26, 1993.* The record shows that the applicant was convicted of attempting to enter the United States by a willfully false or misleading misrepresentation or willful concealment of a material fact in violation of 8 U.S.C. § 1325(a)(3). *Judgment in a Criminal Case, dated August 26, 1993.* The documentation in the record, the AAO finds, establishes that the applicant is inadmissible for falsely claiming U.S. citizenship in 1993.

The AAO will now address the finding that a waiver is not warranted.

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 chapter 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 chapter . . . is inadmissible.

....

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

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 IIRAIRA, 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.

Although the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, she is eligible to apply for a waiver of inadmissibility as her claim to U.S. citizenship occurred prior to September 30, 1996. Thus, the provision of IIRAIRA, which does not allow for a waiver of inadmissibility for a false claim to U.S. citizenship made on or after September 30, 1996, is not applied retroactively to the applicant.

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. Hardship to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is 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 record contains letters, birth certificates, a marriage certificate, income tax records, earnings statements, a declaration, school certificates, photographs, and other documents.

Letters in the record attest to the good character of the applicant. One letter is from [REDACTED] a kindergarten teacher with The New Sullivan Elementary School; [REDACTED] commends the applicant for her volunteerism from September 2004 through June 2005.

The letter from the applicant's daughter, [REDACTED], conveys [REDACTED]'s need for her mother.

In his declaration, [REDACTED], the applicant's husband, indicates that he has lived in the United States for 20 years. He states that he is employed as a locomotive engineer with Norfolk Southern Corporation since September 1997, and that he has been married to the applicant since 1990 and they have three U.S. citizen daughters. He conveys that he works seven days a week and that he must work overtime to support his family. He indicates that the family rents a house and he maintains it. He states that the applicant manages the house, finances, and cares for the children, which he does not have time to do. He states that his wife's help minimizes the stress in his life and that he stops talking to his children when stressed or overworked. He states that he cannot imagine life without his wife, who is the family mediator and peacemaker and his friend. [REDACTED] states that if separated from his wife, he will have to work more, which will prevent his dream of having his children attend college. He states that his wife has a good heart and that she helps others. He conveys that his wife will have no future in Mexico, where she has not been for nine years and for this reason will be foreign to her. He states that his wife's family in Mexico will not be able to help her financially. He states that his wife is from a town that has nothing to offer and that obtaining a job is by references, which his wife no longer has. He states that he will not be able to support his wife because he is barely able to meet his financial obligations. He conveys that his dreams will be shattered if his wife must return to Mexico. He states that his children are accustomed to being cared for by their mother. He states that he cannot forget the suffering he experienced when the applicant was in Mexico in 1993 and remained there for three years.

The birth certificates in the record convey that the applicant's daughters are 6, 9, and 16 years old. Counsel indicates in the appeal brief that the family has a newborn. The record contains ultrasound images.

In the appeal brief counsel states that the district director failed to consider all of the relevant factors such as the cost of living in Chicago, Illinois, and childcare costs, which counsel states would be hundreds of dollars every week, if the applicant no longer cares her four children. Counsel states that [REDACTED] hardship was not analyzed as it relates to his children: he would be a single parent paying for childcare for four children on a gross income of \$58,000.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's husband would endure extreme hardship if he remains in the United States without her.

██████████ claims that he will experience economic hardship if the applicant is no longer available to care for their four children. The record reflects that ██████████ earned \$58,562 in 2003. He is employed as a locomotive engineer. Although ██████████ states that he works overtime to support his family, no documentation has been submitted to show that he often works overtime. No documentation has been provided of the rent and household expenses of the ██████████ family and of the cost of childcare. Thus, the record lacks documentation to demonstrate that ██████████ would be unable to financially support his family without the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. As held by the BIA, the birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The declaration from [REDACTED] reflects that he is very concerned about separation from his wife and his wife's separation from their children. [REDACTED] indicated that he had suffered when separated from his wife from 1993 to 1996, a period of three years, but there is no documentation in the record showing that [REDACTED] required treatment from a mental health professional during the three-year absence. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

The record is insufficient to establish that [REDACTED] would endure extreme hardship if he joined his wife in Mexico.

[REDACTED] states that his wife will not find employment in Mexico, that he will not be able to provide financial support for her, and that Mexico is a foreign place to his wife. [REDACTED] also states that Mexico is foreign to his wife, as she has lived in the United States for 9 years. The AAO notes that hardship to the applicant is not a consideration in this matter except as it may affect the applicant's spouse. [REDACTED] makes no claim of hardship to himself should he join his wife in Mexico, therefore, the AAO cannot determine that he would experience extreme hardship in Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the

aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.