



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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

H2

FILE:

Office: CHICAGO, IL

Date: JAN 09 2007

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, Chicago, Illinois 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 lawful permanent resident 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 his spouse and U.S. citizen children.¹

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 March 28, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit of the applicant; an affidavit of the applicant's spouse; tax statements for the applicant and his spouse; Attorney's Memorandum to the Form I-601; employment letters for the applicant; and a letter from the applicant's children. 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 his adjustment of status interview to presenting himself for inspection as a returning resident alien of the United States at the Cordova Port of Entry in El Paso, Texas on

¹ The AAO notes that the applicant has eight children. According to the record, at least four of the children are U.S. citizens. *See Form I-485; Naturalization certificate.*

March 17, 1979 by using a counterfeit Alien Registration Receipt Card (Form I-151). *Form I-485; Record of Sworn Statement*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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 himself 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).

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 she resides in Mexico or 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is originally from Mexico and her parents continue to live there. *Form G-325A for the applicant; Affidavit from the applicant's spouse*. The applicant and his spouse have lived in the United States for 16 years. *Attorney's brief*. All of the children they have together along with their grandchildren live in the United States. *Id.* The AAO notes that if the applicant's spouse resided in Mexico, she would be returning to her native country. The applicant's spouse stated there are no job opportunities in Mexico, and the family business no longer exists. *Affidavit from the applicant's spouse*. While the AAO acknowledges the applicant's spouse's statements, the AAO does not find that the record demonstrates that the applicant's spouse would be unable to sustain herself and contribute to her family's financial well-being in Mexico or that the applicant could not also contribute to the family's finances. The applicant stated that his spouse recently developed problems with the circulation in her legs, making it difficult to stand for long periods of time. *Affidavit of the applicant*. The AAO notes that the applicant's health condition is non-life threatening and there is nothing in the record to demonstrate that the applicant's spouse would be unable to receive adequate medical attention in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has always depended upon the applicant for financial and emotional support. *Attorney's Memorandum to the Form I-601*. The applicant's spouse is a part-time employee at a clothing store. *Affidavit of the applicant*. Without the applicant, the applicant's spouse cannot receive medical insurance, pay their children's expenses, maintain their house, or even afford basic needs, such as food. *Attorney's Memorandum to the Form I-601*. While the AAO acknowledges the applicant's spouse's situation, the AAO does not find that the record demonstrates that the applicant would be unable to sustain himself and contribute to his family's financial well-being from Mexico. According to the applicant, his spouse has poor circulation in her legs and she is unable to stand for long periods of time. *Affidavit of the applicant*. Due to this condition, the applicant's spouse would be unable to work full-time in the clothing store, as she would have to be on her feet the entire time. *Id.* The applicant does not believe his spouse would be able to find any other full-time employment, as she does not have an education nor does she speak English very well. *Id.* While the AAO acknowledges the applicant's concerns, it notes that the applicant's spouse is still capable of working. Additionally, there are several adult children who may be able to financially help the applicant's spouse. The applicant and his spouse have been married since 1975. *Marriage certificate*. The applicant has been his spouse's partner, in every respect, for over 30 years. *Attorney's Memorandum to the Form I-601*. Both the applicant and his spouse have worked very hard to provide a healthy and happy environment for their children and themselves. *Id.* 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, 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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)(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.