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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: PHOENIX, ARIZONA

Date: MAR 06 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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, Phoenix, Arizona, 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The record reflects that in connection with a previous application to adjust his status to that of lawful permanent resident (LPR), the applicant presented a Form I-94 entry card bearing an Immigration and Naturalization Service stamp number that had been taken out of service prior to the January 1, 2000 entry date. The district director therefore concluded that the applicant had obtained the I-94 card in a fraudulent manner, and that he was inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant applied for a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with his U.S. citizen wife and children.

The district director denied the waiver application after finding that the applicant had failed to specify the event or occurrence that rendered him inadmissible. The district director noted that in block 10 on the waiver application Form I-601, the applicant merely wrote "misrepresentation—see service records," instead of indicating the exact instance of misrepresentation for which the waiver was requested. The district director did not consider any hardship or discretionary factors in his decision.

On appeal, counsel maintains that the waiver application sufficiently indicated the ground of inadmissibility for which the waiver was requested, and that the district director erred in failing to evaluate the merits of the waiver factors presented. The AAO agrees with counsel's assertion in this regard but does not agree with counsel's contention that the district director was required to send the applicant a request for further evidence (RFE) in the instant case. Counsel asserts that the district director should have offered the applicant a more thorough opportunity to explain and/or provide evidence regarding how he obtained his I-94 card, and that the district director incorrectly concluded that the applicant engaged in fraud or misrepresentation. The AAO concurs with the district director's finding, because the stamp on the applicant's I-94 card had previously been taken out of service; therefore, it could not have been used to stamp the applicant's card upon entry on January 1, 2000. It must be concluded that the applicant did not acquire the stamped card legitimately.

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 may, in the discretion of the Attorney General, 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 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.

- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant or his or her children as a result of removal is not considered in § 212(i) waiver proceedings, except as it affects the qualifying relative(s). Should extreme hardship be established by an applicant, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In this case, the applicant's qualifying relative is his U.S. citizen spouse. As she is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that she would experience extreme hardship if she relocates to Mexico or remains in the United States.

In *Cervantes-Gonzalez*, *supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In his brief in support of the waiver application, counsel contends that the applicant's wife would suffer extreme hardship if she relocates to Mexico with the applicant. Counsel points out that the applicant's wife was born and raised in the United States and her entire family (except for one brother) lives in the United States. Counsel asserts that the applicant's wife would experience extreme hardship due to the high crime rate and weak economy in Mexico, and that she would suffer psychologically upon having to place her children in such a negative situation. He asserts that she is a person without skills and that it would be almost impossible for her to find employment in Mexico. In her September 10, 2003 letter in support of the waiver application, the applicant's wife wrote that she was also extremely concerned about her asthmatic son's health prospects in Mexico, as the family would not have medical insurance. She also stated that she cares for her father, who is in ill health and lives with her, and that she would suffer if she had to leave him in the United States.

The record contains a letter dated August 30, 2003 written by [REDACTED], Ph.D., a psychologist. Dr. [REDACTED] described the applicant's and his wife's background and family situation, but she did not provide a

diagnosis or prognosis for the applicant's wife. Dr. [REDACTED] did not indicate whether the applicant's wife was under psychological or medical care, and she did not recommend any such care in the applicant's wife's case. Accordingly, the record does not establish that the applicant's wife's psychological suffering would be greater than that of other individuals who relocate abroad to accompany a spouse. The AAO has also reviewed the country conditions information submitted for the record, a copy of the discussion of human rights in Mexico from *Country Reports on Human Rights Practices* – 2002, Department of State, March 31, 2003. The evidence provided in the report does not establish that the applicant's wife or her children would be at risk of personal harm in Mexico or that she would be unable to find employment if necessary, as claimed by counsel. While the AAO notes that the record includes a letter from a pediatric clinic indicating that the applicant's son has been diagnosed with asthma, that letter offers no indication of the severity of his condition or the type of medical treatment he requires. Accordingly, the record does not establish that his condition could not be adequately and affordably treated in Mexico, which the applicant's wife has indicated is a source of great concern to her. Although the applicant's wife also indicates that leaving her sick father to relocate to Mexico would depress her, the record does not demonstrate that the responsibilities she currently shoulders in regard to her father's care could not be shared among her eight siblings, thus alleviating at least some of her concerns.

If the applicant's wife remains in the United States, counsel contends that the emotional and financial impacts of her separation from her husband would constitute extreme hardship. Counsel points out that if the applicant is removed, his wife would lose the health insurance coverage provided by his current employment. However, despite the claims of the applicant's wife that she would not be able to work, there is no evidence in the record that demonstrates that she would be unable to find employment with health coverage for herself and her children. Moreover, the AAO notes that the applicant's wife has a close relationship with her eight siblings who may be able to assist her financially in the applicant's absence. Accordingly, there is no evidence in the record that indicates that the applicant's wife would suffer financially to a greater extent than other spouses of persons who are removed. Neither does the record establish that the emotional toll of the applicant's removal on his wife would be greater than that on similarly-situated individuals. Although the evaluation written by Dr. [REDACTED] states that the applicant's wife is emotionally dependent on him, it does not, as previously noted, indicate that she would require psychological or medical care if he were to be removed from the United States.

The AAO acknowledges that the applicant's wife faces difficult choices and challenges as a result of the applicant's inadmissibility; however, the record fails to show that she would suffer hardship beyond the economic and social disruptions normally created by the removal of a family member. In *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record does not establish that the applicant's wife's experience would amount to extreme hardship; hence, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of

proving eligibility remains entirely with the applicant. 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.