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U.S. Citizenship
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MAR 08 2007

FILE:

[Redacted]

Office: PHOENIX, ARIZONA

Date:

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IN RE:

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APPLICATIONS:

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:

[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.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. The matter 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 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 attempting to enter the United States by falsely claiming United States citizenship. The record indicates that the applicant is the wife of a naturalized United States citizen and she 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 her naturalized United States citizen husband and four United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's husband and lawful permanent resident mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 14, 2005.

On appeal, the applicant, through counsel, claims the District Director misapplied the law regarding extreme hardship. Counsel asserts that the District Director "abused its discretion when it ignored the hardships to nonqualifying relatives and how their hardships would result in indirectly causing extreme hardship to qualifying relatives." *Form I-290B*, filed June 29, 2005. The AAO notes that counsel failed to provide any additional evidence on appeal.

The record includes, but is not limited to, a statement by the applicant's husband, a statement by the applicant's mother, a family psychological evaluation by [REDACTED] dated March 22, 2005, and numerous letters of support and reference from friends and family of the applicant and her husband. 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...

The AAO notes that the record contains several references to the hardship that the applicant's children and siblings would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident children or siblings. In the present case, the applicant's spouse and mother are the only qualifying relatives, and hardship to the applicant's children and siblings will not be considered, except as it may cause hardship to the applicant's spouse.

The record reflects that on January 15, 1990, the applicant applied for admission to the United States at the Calexico Port of Entry, California, by claiming she was born in the United States.

The AAO notes that aliens making false claims to United States 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 afford aliens in the applicant's position, those making false claims to United States 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 IIRIRA, 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.

As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

In the present application, the record indicates that on January 16, 1990, after the applicant was apprehended at the Calexico Port of Entry, a United States Magistrate for the Southern District of California found the applicant guilty of Conspiracy to Elude Inspection, in violation of 18 U.S.C. §§ 371 and 1325. She was ordered to a term of imprisonment for forty-five (45) days.¹ On April 8, 1992, the applicant married Mr.

¹ The AAO notes that the applicant was processed by the Immigration Service as "[redacted]" with an alien number of "[redacted]". Also, though she was not convicted of a false claim to United

██████████, in Mexico. In April 1992, the applicant entered the United States without inspection. ██████████ became a naturalized United States citizen on July 23, 1999. On May 26, 2001, the applicant filed a Form I-130, an Application to Register Permanent Residence or Adjust Status (Form I-485), and a Form I-601. On October 22, 2003, the Form I-130 was approved. On July 14, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen husband and lawful permanent resident mother.

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 herself experiences upon deportation 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 husband and lawful permanent resident mother. 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 Board of Immigration Appeals (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.

Counsel asserts that the applicant's husband would face extreme hardship if he relocated to Mexico in order to remain with the applicant. The applicant's husband states that he and his wife do not have any ties or relatives in Mexico, and all their family resides in the United States. *See Statement by ██████████* filed April 7, 2005. He claims he "hardly read(s) and write(s) Spanish." *Id.* The AAO notes that the applicant's husband is a native of Mexico, who spent all of his formative years in Mexico, and presumably speaks Spanish. The applicant's husband states that while he works, the applicant "takes care of our children...Our children are very attached to their mom." *Id.* The applicant's husband states his "work provides my entire medical and benefit needs...for my four children and my wife." *Id.* Additionally, he claims he would not be capable "of providing for [his] family somewhere else." *Id.* The AAO notes that the applicant's husband is a trained carpenter, who failed to provide any evidence that he could not obtain a job in Mexico that would support his family. ██████████ states "it appears that the ██████████ family is a close nit [sic] and seemingly well functioning family...The children were clear in their communication about the difficulty they would face in either being separated from their mother or in moving back to Mexico...There does seem to be some evidence that the distress associated with this current situation is already adversely impacting ██████████ [one of the applicant's children] in that his grades have decreased...It seems likely that a significant alteration in this

States citizenship, the record clearly reflects that she made an oral false claim to United States citizenship. A conviction is not necessary to make a finding of inadmissibility.

families living situation would have adverse consequences for the children as well as the parents.” *Family Evaluation by [REDACTED]*, dated March 22, 2005. The AAO notes that the psychological evaluation focused primarily on the children and the extreme hardship they would suffer if the applicant were removed from the United States; however, the applicant’s children are not qualifying relatives for a waiver under section 212(i) of the Act. Additionally, the evaluation did not establish that the applicant’s husband would suffer from any emotional or psychological problems if he had to relocate to Mexico to be with his wife. The applicant’s mother states that her husband was diagnosed with kidney disease and the applicant “has been one of our main supports not only emotionally but also financially through these difficult times.” *Statement by [REDACTED]* dated March 22, 2005. The applicant’s mother failed to address if she has any ties to Mexico and what hardships she would suffer if she returned to Mexico with her daughter. Additionally, the applicant’s mother failed to provide any evidence of how much or how often the applicant sends financial support. The AAO finds that the applicant failed to demonstrate how her mother would suffer any extreme hardship if the applicant were removed to Mexico.

In addition, counsel does not establish extreme hardship to the applicant’s husband if he remains in the United States, maintaining his employment, access to adequate health care, education for the children, and close proximity to his family. As a United States citizen, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO notes that the income from the applicant’s husband’s employment appears to be the main source of income for the family. *See Affidavit of Support (Form I-864)*, dated October 16, 2003. No documentation was submitted to establish that the applicant’s husband will experience a major financial hardship as a result of the separation from the applicant. The applicant’s husband states the applicant takes care of the house and children; however, the children are now all school-age and help in taking care of the house (i.e., washing and folding clothes, cleaning the kitchen, and taking out the trash. *See Family Evaluation by [REDACTED]* dated March 22, 2005). The applicant’s husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her 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).

Although the AAO is not insensitive to the applicant’s situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s husband 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 deportation or exclusion and does not rise to the level of extreme hardship.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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.