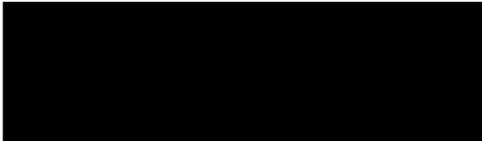


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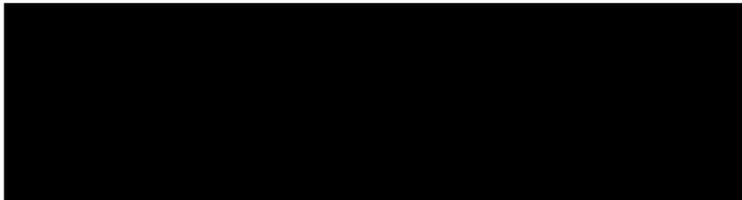
IN RE:



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, Houston, Texas. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation. The record indicates that the applicant is married to a lawful permanent resident of the United States. 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 lawful permanent resident spouse and three 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 Decision*, dated May 25, 2005.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his lawful permanent resident wife. *Brief attached to Form I-290B*, filed June 28, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, birth certificates for the applicant's United States citizen children, and photos of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

Sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) 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.
- (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 Act (including section 274A) or any other Federal or State law 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 record reflects that on June 4, 1990, the applicant applied for admission to the United States at the Port of Entry at Brownville, Texas, by presenting the United States birth certificate of one Rafael Sanchez.¹

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, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

In the present application, the record indicates that on October 29, 1988, the applicant and [REDACTED] were married in Mexico. On June 18, 1996, during a workplace raid, the applicant was discovered to have a fraudulent I-551 card. In the Record of Deportable Alien (Form I-213), the applicant stated he entered the United States without inspection, at Laredo, Texas, in January 1991. On December 16, 2003, the applicant's wife became a lawful permanent resident, through her brother, [REDACTED]. On April 29, 2002 and October 5, 2004, the applicant's spouse filed an Application to Register Permanent Resident or Adjust Status (Form I-485) for the applicant. On October 5, 2004, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On May 25, 2005, the District Director denied the applicant's Form I-601, finding he failed to demonstrate extreme hardship to his lawful permanent resident spouse.

¹ [REDACTED] is the applicant's brother-in-law.

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 deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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 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 if the applicant is removed to Mexico, the applicant's spouse and their three United States citizen children would relocate to Mexico. *Brief attached to Form I-290B*, filed June 28, 2005. The applicant's wife states she does not want to move to Mexico because they would lose their "home, car, and everything that [they] own." *Affidavit of* [REDACTED], dated June 22, 2005. The AAO notes that the applicant's spouse is a native and citizen of Mexico, who spent her formative years in Mexico. The applicant states his "wife's immediate family lives in Texas," but he fails to address whether or not he has any family ties in Mexico. *Affidavit of* [REDACTED], dated June 22, 2005. The applicant's wife states she does not work outside of the home, but she helps her "husband to take care of the children, and keep things in order at home, while he is working so that [they] can pay [their] bills." *Affidavit of* [REDACTED] dated June 22, 2005. The applicant admits to using his brother-in-law's birth certificate in order to enter the United States and using a counterfeit I-551 card to obtain employment and apologizes for these two immigration violations. *See Affidavit of* [REDACTED] dated June 22, 2005. Counsel asserts that the District Director's decision contained two inconsistencies and he attempts to clarify them: First, the last time the applicant entered the United States was in 1996, and the applicant's mother is a lawful permanent resident, not a United States citizen. Counsel discusses the hardships the applicant's wife would suffer if the applicant were removed to Mexico, primarily as the family "will not be able to continue paying the rent for the lot of their house or their vehicle insurance...[and] their children will suffer a culture shock [and] economic hardship." The AAO finds that these hardships noted by counsel, do not rise to the level of extreme hardship as required by the act.

In addition, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, with access to adequate health care, education for her children, and close proximity to her family. As a lawful permanent resident, 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. Beyond generalized assertions regarding country conditions

in Mexico, 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).

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 deportation or exclusion 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)(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.