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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CLEVELAND, OHIO

Date: NOV 16 2007

IN RE:

Applicant:



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, Cleveland, Ohio, and 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 using fraudulent entry documents. The record indicates that the applicant's parents are lawful permanent residents and he 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 his lawful permanent resident mother and father, and United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 30, 2007.

On appeal, the applicant, through counsel, asserts that the "USCIS District Director erroneously denied the applicant's I-601 waiver application, without issuing an RFE or a NOID." *Form I-290B*, filed May 30, 2007. Counsel further questions the bases on which the District Director concluded the applicant was inadmissible. *See Counsel's Brief*, filed May 30, 2007.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant, a statement from the applicant's father, e-mails from [REDACTED] regarding the applicant's parents' health conditions, and numerous letters of reference from the applicant's employer, co-workers, friends, family and acquaintances. 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...

In the present application, the record indicates that the applicant initially entered the United States without inspection in March 1992. On November 28, 1992, the Immigrant Petition for Relative, Fiance(e) or Orphan (Form I-130), filed on behalf of the applicant by his father, was approved. The applicant, based on his affidavit, departed the United States in January 1996, and, on February 26, 1997, was arrested at the San Diego border for attempting to enter the United States using a fraudulent entry document. On October 20, 1997, the applicant's son, [REDACTED], was born in Ohio. On April 3, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On September 6, 2001, the applicant's Form I-485 was denied. On November 7, 2002, the applicant's place of employment, Cozumel, Inc., filed an Immigrant Petition for Alien Worker (Form I-140) on behalf of the applicant. On February 11, 2002, a Notice to Appear (NTA) was issued against the applicant. On or about February 26, 2002, the applicant, through counsel, filed a motion to terminate removal proceedings. On January 13, 2003, the applicant's Form I-140 was approved. On January 14, 2003, the applicant married [REDACTED] in Ohio. On April 11, 2003, an immigration judge ordered the applicant's removal proceedings to be terminated. On April 21, 2003, the applicant filed another Form I-485. On January 13, 2005, the applicant's son, [REDACTED] was born in Ohio. On November 2, 2006, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On April 30, 2007, the applicant's second Form I-485 was denied. On the same day, the District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to his qualifying relatives. On May 30, 2007, the applicant, through counsel, filed a motion to reopen/reconsider the Form I-485 decision. On August 29, 2007, the Director denied the applicant's motion to reopen/reconsider.

On appeal, counsel notes that in denying the Form I-485, the District Director found the applicant to be inadmissible under sections 212(a)(9)(B)(i) and 212(a)(6)(C)(i) of the Act, while the Form I-601 decision issued to the applicant indicates that the applicant is inadmissible to the United States only under section 212(a)(6)(C)(i) of the Act. Counsel surmises that the District Director's failure to address the applicant's inadmissibility under section 212(a)(9)(B)(i) of the Act is evidence that the record does not support the earlier finding regarding the applicant's unlawful presence in the United States. *Counsel's Brief*, page 4, *supra*. He asks that section 212(a)(9)(B)(i) be addressed in the interests of a "complete appellate review." *Id.* Accordingly, the AAO first turns to the issue of whether the applicant is inadmissible to the United States under section 212(a)(9)(B)(i) of the Act.

The District Director found that the applicant "testified on October 28, 2005 that he last entered the United States without inspection in March of 1992. However, later in the interview the applicant admitted that he last entered the United States in 1999. In addition, Service records indicate that during an interview with the Service on September 6, 2001 (regarding a previous I-485) the applicant claimed to have entered the United States without inspection in February of 1998." *District Director's Decision on Form I-485*, dated April 30, 2007. The AAO notes the District Director's statements, but finds the record to lack sufficient evidence to establish that the applicant acquired unlawful presence by departing the United States subsequent to April 1, 1997, the effective date of the unlawful presence provisions of the Act. The brief notations on the applicant's Form I-485's do not, in the absence of signed statements from the applicant at the time of his interviews or

the notes of the interviewing officer, support a finding of unlawful presence. Therefore, the AAO finds that the record does not establish that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i) of the Act and withdraws the District Director's conclusion in this regard.

The AAO does, however, find that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel states that the District Director failed to provide any information regarding the applicant's use of fraudulent documents when he attempted to enter the United States on February 26, 1997. Counsel asserts that under 8 C.F.R. § 103.2(b)(2), the applicant "has a right to get derogatory information in the record and he hereby exercises his said right, and requests that complete derogatory information in the record be disclosed." *Counsel's Brief*, page 2, *supra*. The AAO notes, however, that the record clearly documents the applicant's use of a fraudulent document at the time of his attempted entry in February 1997 and that the evidence of inadmissibility has been provided by the applicant himself. In response to the District Director's Notice of Intent to Deny (NOID) the applicant's Form I-485, prior counsel submitted an affidavit sworn by the applicant that provides the following statement regarding his February 1997 arrest in San Diego:

I returned to the United States on [sic] February of 1997. At this time, I was arrested by [the] Border Patrol at San Diego, California, and returned to Mexico. I returned to the United States almost immediately after my arrest at the border...During my meeting with my attorney prior to my interview, I realized I had not mentioned to my attorney that during my last entry to the United States [sic]...I had used a fraudulent document.

The AAO notes that prior counsel's brief in response to the NOID reiterates the applicant's admission regarding his reliance on a fraudulent document in February 1997, stating that "[t]he applicant admits to the use of fraudulent document in February of 1997, and respectfully request[s] the Service to allow him to file his...Form I-601." *Response and Refute Notice of Intent to Deny*, dated July 24, 2006. Therefore, the record establishes that the applicant attempted to enter the United States in February 1997 by presenting a fraudulent document, and was, at that time, arrested and returned to Mexico. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. However, the AAO finds that the District Director erred in relying on the applicant's "speeding/traffic violation(s)" to determine that the applicant had misrepresented his criminal history. The AAO notes that the District Director's denial of the Form I-485 indicates that the applicant, during his interview on October 28, 2005, admitted to committing various traffic violations, much like those for which the record reports the applicant was arrested in 1994. The AAO notes that the record does not indicate that the applicant was convicted on any of the charges brought against him.

Although he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, the applicant may seek a waiver of his inadmissibility under section 212(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 removal 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 parents. 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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. As just discussed, however, waivers under section 212(i) of the Act are granted to applicants who establish extreme hardship to a United States citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children under section 212(i) of the Act. In the present case, the applicant's parents are the only qualifying relatives, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's parents.

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 under 8 C.F.R. § 103.2(b)(8), the District Director should have issued a Request for Evidence (RFE) or a NOID before denying the applicant's Form I-601. *See Counsel's Brief*, page 5, *supra*. However, the regulation cited by counsel requires the District Director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *See* 8 C.F.R. § 103.2(b)(8). The District Director is not required to issue a request for further information in every potentially deniable case. If the District Director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Furthermore, even if the District Director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The AAO notes that even though counsel contends that the applicant did not have a chance to submit additional evidence, he fails to submit additional evidence on appeal, other than his brief.

The AAO now turns to consideration of applicant's claim that his parents would suffer extreme hardship if the applicant were removed to Mexico. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates to Mexico or remains in the United States since a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. In the present case, neither counsel nor the applicant contend that the applicant's parents or children would suffer extreme hardship should they relocate to Mexico with the applicant and the AAO finds no evidence in the record to establish that this would be the case. Accordingly, the AAO cannot find that the applicant's parents would suffer extreme hardship upon relocation to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event he or she remains in the United States. The applicant states that his “father & mother, both permanent residents, depend on [him]. [He is] their only support, emotionally and financially and it would be of extreme hardship to them if [he] is forced to return to Mexico. [He] have [sic] also two United States citizen children whom [sic] will suffer tremendously if [he] was not here to be with them.” *Applicant’s Affidavit, supra*. The applicant’s father states that if the applicant is removed from the United States his “life and the life of [his] wife, [the applicant’s] mother, are in danger. [His] wife, [REDACTED] is 72 years old and [he is] 77 years old and [his] son [REDACTED] takes care of every detail of [their] medical care and every day life. If he is not here to take care of [them], [his] wife and [he] will die.” *Letter from [REDACTED]*, dated October 31, 2006. Dr. [REDACTED] states the applicant’s father suffers from Cardiopathy and Gastritis, and the applicant’s mother suffers from Diabetes Mellitus Type II and Hypercholesterolemia, and that the applicant covers his parents “medical expenses and [their] medicine.” *E-mails from [REDACTED]*, dated October 18, 2006. On appeal, counsel also contends that the applicant’s parents would suffer the hardship of having to care for his children should he be removed from the United States. *Counsel’s brief*, dated May 25, 2007.

The record, however, contains insufficient evidence to support the hardship claims made with respect to the applicant’s parents. The AAO notes the medical conditions of the applicant’s parents, but finds [REDACTED] statements to offer no indication of the effect that these conditions have on their daily lives and their ability to care for themselves. The AAO also notes that the applicant resides in Ohio and that his parents reside in Texas. The record, however, provides no evidence to establish how the applicant takes care of all the details of his parent’s medical care and their everyday life from such a distance. Further, while the record documents that the applicant is responsible for covering his parents’ medical expenses, it does not demonstrate that he would be unable to meet these expenses from outside the United States. In addition, the record does not establish that the applicant’s family members in the United States are unable to help care physically and financially for the applicant’s parents. The AAO notes that the applicant has ten siblings. *See Letter from [REDACTED]*, dated July 21, 2006. It also finds that among the letters of support included in the record are statements from the applicant’s sister-in-law, [REDACTED], and nephew, [REDACTED], both of whom are residents of Texas. The record also fails to support counsel’s claim that the applicant’s parents would have to care for the applicant’s children in the event of his removal from the United States. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the AAO finds that the applicant has failed to establish extreme hardship to his parents if they remain in the United States.

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 lawful permanent resident parents will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of removal 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 parents 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.