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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

Date: NOV 21 2007

IN RE:

[Redacted]

PETITION: 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 PETITIONER:

[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, [REDACTED], 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), by falsely claiming United States citizenship so as to procure admission to the United States. The applicant is the husband of [REDACTED], a naturalized U.S. citizen spouse. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated May 13, 2005.

The AAO will first address the finding of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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 chapter 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 chapter . . . is inadmissible.

....

- (iii) Waiver authorized

- For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 aliens making false claims to U.S. 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 (IIRAIRA) afford aliens in the applicant's position, those making false claims to U.S. 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 IIRAIRA, 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.*

The record reflects that during an interview, the applicant stated that he attempted to enter the United States by claiming to be a citizen of the United States at the Douglas, Arizona, point of entry on January 16, 1944. The applicant was subsequently arrested for assaulting the immigration inspector. *Memorandum Record of Interview, dated August 4, 2004; Miscellaneous Offense Report, Douglas Police Department, dated January 16, 1994.*

The applicant's false claim to U.S. citizenship, which occurred prior to September 30, 1996, was made to an immigration inspector in order to gain admission into the United States. Thus, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now consider the finding that a waiver of inadmissibility is not warranted.

The applicant's false claim to U.S. citizenship was made prior to the enactment of IIRAIRA. Although he is inadmissible under section 212(a)(6)(C)(ii) of the Act, he is eligible to apply for a waiver of inadmissibility. Thus, the provision of IIRAIRA, which does not allow for a waiver of inadmissibility for a false claim to U.S. citizenship made on or after September 30, 1996, is not applied retroactively to the applicant.

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. Hardship to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is the applicant's 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).

The record contains letters, birth certificates, a marriage certificate, income tax records, earnings statements, a life insurance policy, school records, employment letters, and other documents.

In a letter dated August 1, 2004 [REDACTED] attested to the good character of the applicant and stated that the applicant and his wife have been directors of the Phoenix First Apostolic Church's Junior Department for two years.

A July 28, 2004 letter from the office manager of Octotillo High School indicates that [REDACTED] has been employed full-time at the high school since 1999 and that she earns \$15.40 per hour and has a full benefit package.

The record reflects that the applicant's children are United States citizens and they are 16, 14, 9, and 8 years old.

The record contains the U.S. Department of State 2004 country report on human rights practices in Mexico, and its 1999 country report on economic policy and trade practices in Mexico.

The applicant's letter dated April 26, 2005 indicates that his and his wife's parents and siblings live in the United States. He states that he loves his family and is their principal provider.

The letter from [REDACTED] conveys that her mother has been baby sitting her children since they were born and that the children spend a lot of time with her parents while she and her husband are at work. She indicates that her children are close to her parents and their aunts, uncles, and cousins. She conveys that her children have difficulty communicating in Spanish. She states that she loves her husband and her children love their father and that their oldest son will start high school and will need his father's guidance.

The letters from the applicant's children describe their close relationship with him.

The letters from co-workers, family members, and friends attest to the good character of the applicant.

The letter from the office manager of Tel Tech Networks, Inc. states that the applicant has been employed there as a project foreman since 2003.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N

Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's wife would endure extreme hardship if she remains in the United States without him.

Counsel asserts that the record reflects that [REDACTED] has a very close relationship with his family.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. As held by the BIA, the birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance

of ties does not constitute extreme hardship). In *Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shoostary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The letters from [REDACTED] reflects that she is very concerned about separation from her husband and his separation from their children. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] 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 as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shoostary*, *Perez*, and *Sullivan*, *supra*. The AAO notes that the record conveys that [REDACTED] has a strong support system of parents, siblings, and friends to rely on while separated from her husband.

The AAO finds that the record does not support [REDACTED] assertion, "that he is the principal provider of my family," as the record indicates that [REDACTED] is employed full-time, earning \$15.40 per hour. No evidence has been presented of the family's household expenses; thus, the AAO cannot determine whether [REDACTED] income is required to meet these expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record is sufficient to establish that [REDACTED] would endure extreme hardship if she joined her husband in Mexico.

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's wife, as a result of her concern about the well-being of her children, who are 16, 14, 9, and 8 years old, is a relevant consideration.

With regard to the education of a child, in *Prapavat v. I.N.S.*, 638 F.2d 87, 89 (9<sup>th</sup> Cir.1980), the Ninth Circuit stated that the hardship to the petitioners' United States citizen daughter, who was about five years old at the time of the BIA's decision and is now almost six, must be considered. It stated that:

The child, born in this country, has spent her entire life here. She is enrolled in school, a factor of significance. See, e. g., *Wang*, 622 F.2d at 1348 n.7; *Jong Shik Choe v. I. N. S.*, 597 F.2d 168, 170 (9<sup>th</sup> Cir. 1979); *Urbano de Malaluan v. I. N. S.*, 577 F.2d 589, 595 n.5 (9<sup>th</sup> Cir. 1978). If her parents are deported, this American citizen child will be uprooted from her

native country where she has spent her entire life, and taken to a land whose language and culture are foreign to her.

In *Ramos v. I.N.S.*, 695 F.2d 181, 187 n. 16 (5th Cir.1983) the Fifth Circuit noted the “great difference between the adjustment required” of infants going to a parent’s homeland and school age children facing the same fate. In *Jara-Navarrete v. I.N.S.*, 813 F.2d 1340, 1342 (9th Cir.1986) the Ninth Circuit stated that U.S. citizen children must be given individualized consideration. In *Ravancho v. I.N.S.*, 658 F.2d 169, 175-77 (3d Cir. 1981) the court stated that consideration must be given to the effect of a move to the Philippines would have on an eight-year-old American citizen. In *In Re Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA held that to uproot the respondent’s 15-year-old daughter at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship to her. The Ninth Circuit in *Casem v. INS*, 8 F.3d 700 (9th Cir. 1993), and cases cited therein, observed the difference between the adjustments required of very young children accompanying their parents to a foreign country and those faced by children already in school. *Matter of Andazola*, 23 I&N Dec. 319, 333 (BIA 2002).

states that her children have never lived in Mexico and living there would be hard on them, especially for their youngest son who has difficulty communicating in Spanish. She states that her oldest son will start high school and her son- in the gifted program. The record contains school certificates awarded to the indicates that her mother has cared for her four children since they were born and that her parents spend lots of time with her children while she is at work. The AAO finds that the record suggests that the applicant’s children would endure extreme hardship at this stage in their education and social development if they live in Mexico.

The record reflects that and her husband are actively involved with their church, providing a leadership role in the church’s first Junior Camp. states that her roots and family ties are in the United States, where she has lived for 20 years. She describes a close relationship between her parents and four children and indicates that her mother has cared for her four children since they were born. The record reflects that has been employed by Octotillo High School for eight years. The AAO finds that would experience extreme hardship if she were to join her husband in Mexico, in light of her active involvement with her church, and her strong ties to her parents and their daily contact with and care of her four children since their birth.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record supports a finding of extreme hardship to the applicant’s spouse if she were to join her husband in Mexico. However, it does not support a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship in the event that the applicant’s wife were to remain in the United States without him. Having carefully considered each of the

hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.