

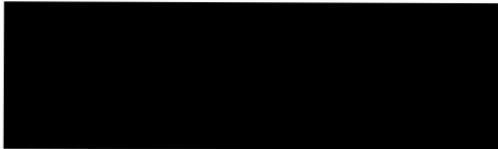
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:



Office: PHOENIX, ARIZONA

Date:

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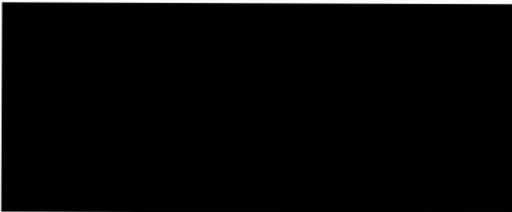
Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix, Arizona, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through counsel, requested 90-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed September 5, 2006. The record contains no evidence that a brief or additional evidence was filed within 90-days. On October 31, 2008, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record is considered complete.

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), for entering the United States by claiming United States citizenship. The record indicates that the applicant is married to a naturalized United States citizen and 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 United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated August 3, 2006.

On appeal, counsel states “[t]he District Director erred in the decision to deny [the applicant’s] [Form I-601].” *Form I-290B, supra*.

The record includes, but is not limited to, statements from the applicant and his wife, a letter from [REDACTED] Ph. D., regarding the applicant’s wife’s mental condition, counsel’s brief attached to the Form I-601, and a marriage certificate. 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 11, 1995, the applicant applied for admission to the United States at the Santa Teresa Port of Entry, in New Mexico, by claiming to be a United States citizen.

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 (IIRIRA) 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 [REDACTED], 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 the applicant entered the United States by claiming to be a United States citizen on June 11, 1995. On January 4, 1996, an Order to Show Cause and Notice of Hearing (OSC) was issued against the applicant. On August 26, 1997, a Notice to Appear (NTA) was issued against the applicant. On or about October 21, 1997, the NTA was cancelled. On December 19, 1997, the applicant was paroled into the United States. On January 31, 2000, the applicant's naturalized United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 1, 2000, the applicant's Form I-130 was approved. On August 31, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On July 25, 2005, the applicant filed a Form I-601. On August 3, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

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 removal 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 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 (Board) 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.

The applicant's wife states she will suffer extreme hardship if the applicant is removed from the United States. *Statement from* [REDACTED] dated July 15, 2005. [REDACTED] states "[i]t is irresistible [sic] not to think the deportation of her husband may so overwhelming [sic] for her." *Behavioral Health Evaluation by* [REDACTED] dated May 22, 2005. The AAO notes that although the input of any mental health professional is respected and valuable, the submitted evaluation is based on a single interview between the applicant's wife and a licensed marriage and family counselor. There was no evidence submitted establishing an ongoing relationship between the counselor and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration

commensurate with an established relationship with a mental health professional, thereby rendering the counselor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's wife states the applicant "has been nothing but an excellent husband and a loving and caring father for [their] children." *Statement from* [REDACTED] *supra*. The AAO notes that the applicant has not demonstrated that his wife could not obtain a job in Mexico. Additionally, the applicant's wife is a native of Mexico, who speaks Spanish, and it has not been established that she has no family ties in Mexico. Furthermore, the AAO notes that the applicant's wife did not provide a statement regarding what, if any, hardship she would suffer if she joined the applicant in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanies him to Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states she does not know how she will "support [her] kids and [her] home and it will be very hard and stressful." *Statement from* [REDACTED] *supra*. The AAO notes that it has not been established that the applicant's wife will be unable to provide or obtain adequate care for her children in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that 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 Board 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 United States citizen 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 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 wife 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.