

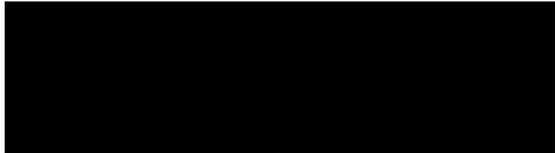
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: PHOENIX, AZ Date: FEB 01 2008

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h) and (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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on April 18, 1994. The applicant is married to a U.S. citizen and the record documents that he has two U.S. citizen children, and one U.S. citizen stepchild. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director found that on April 18, 1994 the applicant submitted an asylum application where he claimed persecution by the Partido Revolucionario Institucional political party. On April 16, 2004, during his adjustment of status interview, the applicant stated under oath that his claims of persecution were false. The acting district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and concluded that the record did not indicate that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. Furthermore, the acting district director noted that a favorable exercise of discretion would not be warranted in the applicant's case because of his record of immigration violations and criminal convictions. The application was denied accordingly. *Decision of the Acting District Director*, dated December 6, 2005.

On appeal, counsel asserts that the applicant did not willfully misrepresent a material fact because he did not know the contents of his asylum application and that Citizenship and Immigration Services (CIS) failed to consider all the evidence in the record. *Form I-290B*, dated January 4, 2006.

Counsel indicated on the Form I-290B that he would be submitting a brief and/or evidence to the AAO within 30 days. The AAO notes that on August 16, 2007 a facsimile was sent to counsel requesting that the brief and/or evidence be sent to the AAO within five business days. As of the present time, no further documentation has been submitted. Thus the present record is considered complete.

The record indicates that on April 18, 1994 the applicant submitted an asylum application where he claimed persecution by the Partido Revolucionario Institucional political party in Mexico. On April 16, 2004, during his adjustment of status interview, the applicant stated under oath that his claims of persecution were false. The applicant's asylum application includes the applicant's signature with a signature date of February 19, 1994. Part E of the asylum application states, "Under penalty of perjury, I declare that the above and all accompanying documents are true and correct to the best of my knowledge and belief." The AAO notes that by signing and dating his asylum application the applicant became responsible for the content of that application, thus, counsel's assertions that the applicant, did not willfully misrepresent a material fact because he did not know the contents of his asylum application are unfounded.

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

- (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 Act is inadmissible.

Section 212(i) of the Act provides that:

- (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 alien 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences or his children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

The AAO finds the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The record indicates that on December 18, 2000 the applicant was convicted of Solicitation to Commit Forgery. The Board of Immigration Appeals (BIA) has held that a crime involving forgery is a crime of moral turpitude. *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). The record also indicates that on September 30, 2002 the applicant was convicted of driving with a suspended license under Arizona Revised Statutes (ARS) § 28-3473C and driving under the influence, under ARS § 28-1382A. Neither of these offenses is found to be a crime involving moral turpitude.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if –

- (1) (A) . . . it is established to the satisfaction of the Attorney General that –
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The record indicates that the applicant was convicted of solicitation to commit forgery in 2000. His current application for adjustment of status is less than 15 years after those activities; he is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent or *son or daughter* of the applicant. Unlike a section 212(i) waiver, a section 212(h)(1)(B) waiver considers hardship to the applicant's children. However, because the applicant is inadmissible under both section 212(a)(6)(C)(i) and section 212(a)(2)(A)(i)(I) of the Act, extreme hardship will be analyzed under the more restrictive requirements of section 212(i) of the Act.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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 extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The evidence of extreme hardship includes a letter from the school psychologist at Paradise Valley Unified School District regarding the applicant's son and a letter from North Valley Neurology and Sleep regarding the applicant's spouse.

The letter from [REDACTED], the school psychologist at Paradise Valley Unified School District requests that the applicant and his spouse attend a meeting regarding their son, [REDACTED] and the difficulties he is having in school. *Letter from* [REDACTED] dated September 23, 2004. The letter from [REDACTED] from North Valley Neurology and Sleep, states that the applicant's spouse was seen for a consultation on August 19, 2004 for a history of headaches and swollen optic nerves. *Letter from* [REDACTED], dated September 9, 2004. The letter states that on September 7, 2004, the applicant's spouse was scheduled for a lumbar puncture, but did not attend her appointment. The letter states that repeated attempts to reach the applicant's spouse have been unsuccessful and that she may have an illness referred to as pseudotumor cerebri, which can cause permanent blindness. *Id.*

The AAO notes that these documents indicate that one of the applicant's sons is having difficulties in school and that his spouse possibly has a serious illness. The record does not, however, identify what problems are being experienced by the applicant's son or address the impact of these problems on the applicant's spouse should the applicant be removed from the United States. Neither does it provide any evidence that the applicant's spouse has a medical condition that would result in extreme physical hardship if the applicant's inadmissibility is not waived.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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 documentation in the record fails to distinguish the hardship that would be suffered by the applicant's spouse from that experienced by other individuals separated from their spouses as a result of removal. Accordingly, the AAO does not find the applicant to have established that his removal from the United States would result in extreme hardship for his spouse. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.