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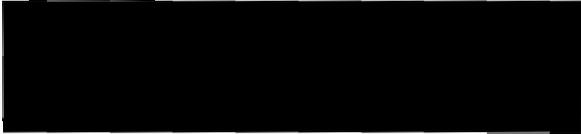
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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712



FILE:



Office: PORTLAND, OR

Date: FEB 07 2008

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 application was denied by the District Director, Portland, Oregon, and a subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely. The AAO now moves to reopen the matter *sua sponte*, based on the submission of new evidence establishing that the applicant's appeal was filed timely. The May 26, 2006, AAO decision rejecting the applicant's appeal will therefore be withdrawn. The applicant's appeal will be dismissed, and the Form I-601, application for waiver of inadmissibility (I-601 application) will be denied.

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). The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The applicant's I-601 application was denied accordingly.

On appeal the applicant asserts, through counsel, that his wife is a U.S. citizen, that he and his wife have two U.S. citizen children [REDACTED] and that he is the stepfather to his wife's other three children [REDACTED] and March 3, 1993.) The applicant asserts that evidence in the record demonstrates his wife would suffer extreme emotional and financial hardship if she remained alone in the United States with their children, or if she moved with their family to Mexico in order to keep the family together.

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

[I]llegal entrants and immigration violators.-

(C) Misrepresentation.-

(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 states in pertinent part that:

(1) The Attorney General [now Secretary, Department 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.

The applicant does not contest that he is inadmissible under section 212(a)(6)(C)(i) of the Act. The record reflects that the applicant attempted to enter the United States claiming to be a U.S. citizen in August 1995. He was subsequently found to be excludable from the United States under section 212(a)(6)(C)(i) of the Act. The record additionally indicates that the applicant failed to disclose his 1995 exclusion from the United States and his false U.S. citizenship claim when applying for, and obtaining, a nonimmigrant visitor visa in August 1996. Based on the evidence in the record, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.<sup>1</sup>

The applicant's wife is a naturalized U.S. citizen. She is thus a qualifying relative for section 212(i) of the Act purposes. The AAO notes that U.S. citizen or lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's wife.

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 had established extreme hardship. The factors included 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *See Perez v. INS, supra*. *See also, Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991.)

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<sup>1</sup> Section 212(a)(6)(C)(ii)(I) of the Act provides in pertinent part that:

[A]ny 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.

It is further noted that a waiver of inadmissibility is not available to an alien found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. In the present matter, however, the applicant's claim to U.S. citizenship is not a ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act, because the claim occurred prior to the September 30, 1996, enactment date of the provision, the applicant was removed from the United States prior to September 30, 1996, and the record contains no evidence that the applicant subsequently repeated his claim of U.S. citizenship upon reentry into the country.

The applicant indicates, through counsel, that he and his wife [REDACTED] have been married since July 1999, and that his wife would suffer extreme emotional and financial hardship if she remained in the United States without him, or if she moved with him to Mexico. The applicant submits the following evidence to support his assertions:

An affidavit signed by the applicant indicating that he and his wife have a loving and supportive relationship, and that: she has suffered a lot of pain and would not be able to adjust to life in Mexico. The applicant indicates further that his wife's ex-husband would not allow her to bring her three older children to Mexico.

An affidavit signed by [REDACTED] indicating that she and the applicant have a child together (as of September 2007, they have two children together.) [REDACTED] indicates that three children from her first marriage generally live with them, and also spend time living with their father in California. [REDACTED] indicates that the applicant's stepson, [REDACTED] presently lives with them, and that her daughters live with their father, but are expected to live with Ms. [REDACTED] and the applicant in the summer. [REDACTED] states that her relationship with the applicant is loving and very special, and that it brings a smile to her face and makes her feel safe. She states that she has a low tolerance for stressful situations and gets frustrated easily due to problems related to her first marriage and divorce, and [REDACTED] states that the applicant has changed her life for the better. [REDACTED] indicates that she and the applicant work full-time and that he helps her take care of their home and their children. She indicates further that she and the applicant are presently in the process of purchasing a home together, and she states that her parents, siblings and grandparents all live in the United States.

A Statutory Warranty Deed reflecting that the applicant purchased a house on December 5, 2002.

A pay stub for the month of May 2004, reflecting that the applicant worked 159 hours and earned \$2,226.00.

A pay stub for an illegible pay period in April 2004, reflecting that [REDACTED] worked for Horizon Air. The hours worked and amount earned are illegible.

January 2004, U.S. Consular Information Sheet relating to country conditions in Mexico.

A Psychological Evaluation prepared on May 17, 2004, by [REDACTED] indicating in pertinent part that: [REDACTED] was physically and emotionally abused as a child and that her first marriage was abusive and her divorce difficult; [REDACTED] has a job at Horizon Airlines that has left her with herniated disks in her back and caused her to be under a doctor's care and to be placed on light duty and work reduced hours; that the applicant is the only reliable source of emotional and financial support that [REDACTED] has. The evaluation indicates that [REDACTED] has a diagnosis of Major Depressive Disorder, Recurrent, Moderate, Without [REDACTED] Psychotic Features. The evaluation indicates further that Ms. [REDACTED] suffers serious depression with fleeting suicidal ideation, and that she would benefit from anti-anxiety/anti-depressant medications. The evaluation indicates that [REDACTED]

General Adaptive Functioning Scale could fall into the critical range if she moved to Mexico and was separated from her children.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish his wife would suffer hardship beyond that normally suffered upon removal, if the applicant is denied admission into the United States, and she remains in the United States. The pay stub evidence contained in the record fails to establish that [REDACTED] is financially reliant on the applicant. Furthermore, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record contains no medical or employment evidence to corroborate the assertions that [REDACTED] has suffered permanent back injuries, or that injuries that have impeded her ability to work. The applicant additionally failed to demonstrate that his wife would suffer emotional hardship beyond that commonly associated with removal if he were denied admission into the United States. The record contains no evidence to indicate that [REDACTED] requires or has received medical or psychological treatment for domestic abuse, and it is noted that [REDACTED] does not discuss past abuse or its effects in her affidavit. Furthermore, the record contains no evidence to indicate that [REDACTED] requires or has received treatment for her mental state, and the May 2004 psychological evaluation prepared by [REDACTED] does not prescribe medical or follow-up treatment for [REDACTED].

The record also lacks evidence to establish that the applicant's wife would suffer extreme hardship if she moved with the applicant to Mexico. The present record reflects that the applicant's wife is familiar with the language, culture and environment in Mexico, as she is originally from Mexico. Emotional hardship caused by severing family and community ties has also been found to be a common result of removal. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.) The AAO notes that one of the applicant's stepchildren is over 18 years old, and another will be 18 on November 18, 2008. The third child is presently 14 years old. The evidence in the record fails to clearly establish whether [REDACTED] children from her first marriage actually reside with [REDACTED] and the applicant. Moreover, the record contains no evidence to corroborate the assertion that [REDACTED] ex-husband would not allow their children to live with [REDACTED] in Mexico during the time periods that they are with [REDACTED]. The AAO finds that the country conditions evidence contained in the record is general, and the applicant failed to establish that his family would be subjected to criminal activity in Mexico. Additionally, the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant failed to establish that his wife would suffer extreme hardship if he were denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.