

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: JAN 24 2008

IN RE:

[REDACTED]

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:

[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on certification. The acting district director's decision is affirmed and the application is denied.

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 procuring admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident and her two children are U.S. citizens. 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 her family.

The acting district director initially denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 15, 2005, finding that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Acting District Director*, dated November 15, 2005. The acting district director subsequently moved to reopen the application after the applicant had filed an untimely appeal, determined inadmissibility based on another misrepresentation, concluded that the applicant had failed to establish extreme hardship, ordered that the Form I-601 remain denied and certified the denial to the AAO. *Notice of Certification*, dated February 3, 2006.

The applicant asserts that her spouse would suffer hardship if the applicant's waiver were denied and that Citizenship and Immigration Services (CIS) failed to consider the significance of the hardship that the applicant's spouse would suffer directly and indirectly through his children. *Form I-290B Attachment*, at 2, 4, received December 23, 2005.

The record includes, but it not limited to, statements from the applicant and her spouse, letters of support and the applicant's children's academic awards. The AAO notes that the applicant previously indicated that she would provide additional evidence in support of the Form I-601, specifically documentation relating to her spouse's health. *Form I-290B*, received December 23, 2005. However, it finds no evidence related to the applicant's spouse to be contained in the record. The AAO further notes that the applicant was informed at the time the acting district director certified the decision to the AAO that she could submit a brief or written statement in support of the Form I-601. On December 18, 2007, the AAO contacted the applicant's representative through facsimile and requested a copy of any response that had been provided to CIS following certification. As of this date, no response has been received. Therefore, the evidence of record is considered complete.

The record reflects that on May 13, 1992, the applicant was found guilty pursuant to 8 U.S.C. § 1325 of entering the United States on May 11, 1992 by willfully false and misleading representations and the willful concealment of material facts. As a result of this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

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

¹ The applicant was initially found inadmissible for obtaining employment by falsely claiming to be a U.S. citizen, but the basis for her inadmissibility was changed to the 8 U.S.C. § 1325 conviction.

- (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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant's children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as there is no requirement 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 her spouse in the event of relocation to Mexico. The applicant states that her spouse cares for his parents and they would not be able to survive without his financial and emotional support. *Form I-290B Attachment*, at 2. The applicant states that her spouse would not be able to find employment or obtain full health benefits in Mexico. *Id.* at 3. The record does not include substantiating evidence of these claims, or of any other relevant hardship factors. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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 does not establish that the applicant's spouse would experience extreme hardship upon relocation to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant states that her children's hardship would directly affect her spouse. *Form I-290B Attachment*, at 2. The applicant's spouse details his closeness to the applicant, his desire for his children to be successful and the difficulty they would face. *Applicant's Spouse's Statement*, at 1-2, dated December 6, 2002. The applicant also details her closeness to her spouse and their love and support for their children. *Applicant's Statement*, dated December 6, 2002. The record reflects that the applicant's spouse would face difficulty without the applicant, however, the record does not include sufficient evidence of financial, emotional or other relevant hardship that would support a finding of extreme hardship should the applicant's spouse remain in the United States.

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.

A review of the documentation in the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Therefore, the numerous letters of support will not be evaluated.

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 application is denied.

ORDER: The acting district director's decision is affirmed and the application is denied.