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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: DEC 27 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native of Uruguay and citizen of Canada 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 entry into the United States by fraud or willful misrepresentation, under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States, and under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for being unlawfully present after a previous immigration violation. The applicant is married to a naturalized U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated March 12, 2005.*

On appeal, the applicant contends that the District Director erred as a matter of fact and law, as there are no charges against the applicant and he never misrepresented himself. Counsel asserts that the decision of the District Director made numerous assumptions and failed to take into account that the applicant is a Canadian citizen. Counsel also stated that the District Director erred in not finding that the applicant established extreme hardship to his qualifying relative. *Form I-290B, dated April 5, 2005; Attorney's brief.*

In support of these assertions, the record includes, but is not limited to, a copy of the applicant's Canadian passport; a copy of the applicant's certificate of Canadian citizenship; Affidavit of the applicant, dated April 21, 2005; psychological report for the applicant's spouse, [redacted] Psy.D., dated February 26, 2005; a letter from the applicant's spouse, dated January 12, 2004; a copy of the applicant's birth certificate from Uruguay; a copy of the applicant's Uruguayan passport; employment letters for the applicant's spouse; bank statements for the applicant's spouse; and tax statements for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

(ii) Falsely claiming citizenship.—

(iii) (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.

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(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens unlawfully present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.—

(i) In general. – Any alien who –

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

The record reflects that the District Director found that the applicant first attempted to enter the United States on May 8, 1971 by making a false claim to U.S. citizenship at San Ysidro, California. *Decision of the District Director, dated March 12, 2005.* The District Director stated that the immigration court charged the applicant with attempted entry by false claim as a U.S. citizen, that prosecution was declined, and that the sentence imposed was returning the applicant to the custody of the Mexican government immigration authorities. *Id.* According to the District Director, on March 14, 1996 Service records indicated that the applicant was apprehended by the legacy Immigration and Naturalization Service at the pre-inspection site at Montreal, Canada. *Id.* The District Director asserts that on the Form I-130 filed on the applicant's behalf, it was noted that the applicant was in immigration proceedings at Champlain, New York in 1996. *Id.* On March 1, 1999 the applicant visited the United States and was admitted under the classification of "No Control," the classification given for bonafide Canadian citizens visiting the United States. *Id.; See Also the applicant's passport with stamps.* On February 23, 2000 the applicant was admitted to the United States under the classification of "ARC," a classification given to permanent residents of the United States. *Id.; See also the applicant's passport with stamps.* On the applicant's Form I-485, the applicant stated that he entered the United States on February 23, 2000 as a visitor. *Decision of the District Director, dated March 12, 2005.* Based on this information, the District Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The District Director also found that during the applicant's interview for adjustment of status, he stated under oath that he left the United States on June 6, 2003 under advance parole, returning on June 22, 2003. *Id.; See Form I-94.* Based on this information, the District Director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) and section 212(a)(9)(C)(i)(I). *Decision of the District Director, dated March 12, 2005.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issues of inadmissibility. The record reflects that in 1971 the applicant was charged with attempted entry by a false claim as a U.S. citizen, that prosecution was declined, and that the applicant was returned to the custody of the Mexican immigration authorities. *FBI printout report, dated April 25, 2003.* The applicant stated that this incident was a simple misunderstanding, yet he does not elaborate on what occurred. *Affidavit of the applicant, dated April 21, 2005.* The AAO notes that the record does not include any other documentation regarding this event. The fact that the applicant was not prosecuted for this charge leaves open the possibility that it was found that he did not make a false claim to citizenship. The record also includes information showing that the applicant was apprehended in Montreal, Canada on March 14, 1996. *NAILS printout.* Again, the record is unclear as to the details of this incident. It is also unclear as to why the applicant's passport was stamped "ARC," as he is not a lawful permanent resident of the United States. As the record is so vague and unsupported by documentary evidence, the AAO is unable to find that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO does find, however, that the applicant is inadmissible for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. The applicant accrued unlawful presence from the time he went out of legal status until he filed the Form I-485 on March 10, 2003. The accrual of unlawful presence was triggered by the applicant's June 6, 2003 departure from the United States. On February 23, 2000 the applicant was admitted to the United States under the classification of "ARC," a classification given to permanent residents of the United States. *See the applicant's passport with stamps.* This classification was incorrect, as the applicant was not a permanent resident of the United States. Had the applicant entered as a visitor, his legal

status would have expired six months from the February 23, 2000 date of entry. The AAO finds that the applicant accrued unlawful presence for over one year, and is thus subject to the ten year bar.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) 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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 a 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.

The AAO notes that extreme hardship to a qualifying relative of the applicant must be established in the event that she resides in Canada or the United States, as she is not required to reside outside of 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.

If the applicant's spouse travels with the applicant to Canada, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Peru. *Form G-325A for the applicant.* She is a naturalized U.S. citizen, and the record does not show that she has any family ties to Canada. The applicant's spouse has many family members in the United States, including her two U.S. citizen children, her siblings, her mother, and at the time of filing, her soon-to-be grandchild. *Psychological report,* [redacted] *Neuropsychological Associates of New Jersey, L.L.C., dated February 26, 2005.* [redacted] does not address the financial impact upon the applicant's spouse if she were to live in Canada. The AAO notes there is nothing in the record showing a lack of employment opportunities in Canada, or that the applicant and his spouse would have difficulties supporting themselves. The applicant's spouse is suffering from Generalized Anxiety Disorder and Major Depression. *Psychological report,* [redacted] *Neuropsychological Associates of New Jersey, L.L.C., dated February 26, 2005.* While the AAO acknowledges the psychological conditions of the applicant's spouse, it notes that the record fails to document that the applicant's spouse would be unable to obtain proper care in Canada. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Canada.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has numerous family ties within the United States.

Psychological report, *, Neuropsychological Associates of New Jersey, L.L.C., dated February 26, 2005.* Although the record does not address what financial impact, if any, would occur to the applicant and his spouse, the AAO notes there is nothing in the record to demonstrate that the applicant or his spouse would be unable to contribute to his family's finances from a location outside of the United States. The applicant's spouse stated that she and the applicant have a very strong and beautiful relationship, and she could not imagine life without him. *Letter from the applicant's spouse, dated January 12, 2004.* The applicant's spouse has had numerous traumatic events over the course of her lifetime. *Psychological report, , Neuropsychological Associates of New Jersey, L.L.C., dated February 26, 2005.* According to the applicant's psychologist, given the applicant's spouse's multiple somatic symptoms and affective vulnerabilities, it is clear that prolonged stress may exacerbate her mental and physical health status. *Id.* As previously noted, the applicant's spouse has been diagnosed as having Generalized Anxiety Disorder and Major Depression. *Id.* The separation of the applicant from his spouse would result in devastating psychological consequences. *Id.* While the AAO acknowledges these difficulties, 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 AAO recognizes that the applicant's spouse 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 deportation or exclusion and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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. The AAO notes that the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act as an alien unlawfully present after a previous immigration violation, as the applicant was unlawfully present for over one year and then re-entered the United States without inspection. Under section 212(a)(9)(C)(ii) of the Act, the applicant will not be eligible to seek a waiver for this ground of inadmissibility until 10 years after the date of his last departure from the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.