U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: JUN. 1 2 2004

IN RE: Applicant: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico. He 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 having sought to procure admission to the United States by fraud or willful misrepresentation of a material fact. On April 13, 1996, the applicant married a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with his spouse and children.

The Interim District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Interim District Director Decision* dated June 30, 2003.

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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record reflects and the applicant admitted under oath that on February 7, 1992, he attempted to procure admission into the United States at the San Luis Port of Entry by falsely representing himself to be a United States citizen. By making a false claim to U.S. citizenship the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed 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 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 extend 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.

On appeal, counsel asserts that Citizenship and Immigration Services, (CIS) misapplied the extreme hardship standard set forth in section 212(i) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relative. Counsel states that on the date the applicant misrepresented himself as a U.S. citizen he was a minor and that an August 21, 1997, memo issued by the Immigration and Naturalization Service provided guidance regarding unaccompanied minors who appear to be inadmissible under section 212(a)(6)(C) of the Act. Counsel states that according to the memo an unaccompanied minor is to be handled informally. Counsel's assertion is unpersuasive since the applicant was found inadmissible in 1992 a time when the memo he refers to was not in existence. Furthermore counsel has not provided evidence that the provisions of the memo were to be applied retroactively.

Counsel further states that since the applicant was a minor when he misrepresented himself in 1992 his actions should not be considered for a section 212(a)(6)(C) finding. Counsel furthers states that the Act excuses juveniles under section 212(a)(2)(A)(ii)(I) of the Act. Section 212(a)(2)(A)(ii)(I) of the Act is very specific and relates only to crimes involving moral turpitude. There is no age distinction or exception in the Act regarding an alien who has been found inadmissible under section 212(a)(6)(C) of the Act.

Furthermore counsel states that the guidance set forth by the State Department in its Foreign Affairs Manual (FAM) indicate that a timely retraction would serve to purge a misrepresentation. The FAM indicates that whether a retraction is timely depends on the circumstances of each case. In general it should be made at the first opportunity. The Inspector's Field Manual states in part: "In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity." There is no evidence the applicant made a timely retraction at the first opportunity.

On appeal counsel asserts that if the applicant is removed from the United States his spouse (Ms. [redacted] would not be able to support her children due to her limited financial resources. No documentary evidence was provided to support this assertion. In her affidavit [redacted] states that she does not want to move to Mexico because her children would not have a good future and they have better opportunities in the United States.

There are no laws that require [redacted] or her children to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing

more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

The applicant submits an affidavit in which he states that ". . . . separation would cause a lost of a spiritual, fatherly, emotional, moral and economical support for my wife and children. . . ."

If the applicant is removed to Mexico his U.S. spouse and children would suffer hardship, but there is no indication that this will impact them at a level commensurate with extreme hardship. If and her children were to accompany the applicant to Mexico, it would be expected that some economic, linguistic and cultural difficulties would arise. No evidence exists that and her children would not be able to adjust to life in Mexico if they were to relocate with the applicant.

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 U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse or children would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.