U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: DEC 16 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the parent of citizens of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his children and grandchildren.

The district director found that based on the evidence in the record, the applicant had failed to establish the requisite relationship for waiver eligibility. The application was denied accordingly. *Decision of the District Director*, dated August 10, 2004.

On appeal, counsel contends that the record fails to establish that the applicant willfully sought to make a misrepresentation. Counsel asserts that the applicant was released to Mexico without being charged and that this chain of events does not amount to a violation of section 212(a)(6)(C)(i) of the Act. Counsel further indicates that the applicant is a law-abiding citizen who presents considerable equities. *Appeal to USCIS Denial of I-601 Waiver Application*, dated October 8, 2004.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> (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.

The record reflects that on December 3, 1966, the applicant made an attempt to enter the United States by presenting a photo-substituted entry document.

Counsel contends that the record reflects that the former Immigration and Naturalization Service declined to prosecute the applicant for his attempt to procure admission to the United States through fraud and willful misrepresentation and therefore, that the applicant's December 1966 attempt to obtain admission does not rise to the level of a misrepresentation pursuant to section 212(a)(6)(C)(i) of the Act. *Appeal to USCIS Denial of*

I-601 Waiver Application at 2. The AAO notes that the language of section 212(a)(6)(C)(i) of the Act does not require that charges be brought, prosecution be undertaken, and/or a conviction be obtained in order for a violation to be determined. Counsel fails to cite any authority supporting her argument to the contrary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO, therefore, finds the assertions of counsel unpersuasive.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and/or parent. 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 record demonstrates that the applicant is the parent of citizens of the United States. The record does not establish that the applicant possesses a spouse or parent who is a lawful permanent resident or citizen of the United States. The AAO, therefore, finds that the applicant has not established a relationship with a qualifying relative as required by section 212(i) of the Act and, based on the record, the applicant is ineligible for a waiver of his inadmissibility to the United States.

The AAO acknowledges the assertions of counsel relating to the equities presented by the applicant as well as the submission of a letter of support from the applicant's son. *See Appeal to USCIS Denial of I-601 Waiver Application* at 2-3; *see also Motion for Waiver of Grounds of Inadmissibility, Statement of Felix Garcia*, dated December 1, 2002. The AAO finds, however, that hardship suffered by the applicant's son cannot be considered because the applicant's son is not a qualifying relative in waiver proceedings under section 212(i) of the Act.

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.