U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO, IL Date: FEB 2 4 2005

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, Chicago, Illinois, 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative. She 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 spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 10, 2004.

On appeal, counsel contends that the applicant is eligible for a waiver under section 212(i) of the Act since she can establish that the refusal of her admission to the United States would result in extreme hardship to her United States citizen spouse. *Form I-290B*, dated May 10, 2004.

The record reflects that during October 1998 and September 1999, the applicant presented documentation belonging to her sister in order to obtain admission to the United States.

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.

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 herself 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. 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 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 AAO notes that prior counsel indicated that the applicant is inadmissible pursuant to section 212(a)(9)(B) as well as section 212(i) of the Act. *Letter from Centro Romero*, dated October 16, 2002. The record reflects that the applicant presented fraudulent documentation in order to obtain admission to the United States on two separate occasions. The record fails to establish the date on which the applicant departed from the United States creating the need for her second fraudulent entry therefore the record is inconclusive regarding whether or not the applicant triggered unlawful presence provisions under the Act as a result of her departure. The AAO notes that the decision of the district director fails to discuss this issue.

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

> (B) Aliens Unlawfully Present.-
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > > (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.

Sections 212(a)(9)(B)(i) and 212(a)(9)(B)(ii) of the Act provide a three and ten year bar to admission, respectively. The AAO notes that section 212(a)(6)(C)(i) of the Act provides a permanent bar to admission. Further, waiver provisions under sections 212(a)(9)(B)(v) and 212(i) of the Act employ the same standard of review and therefore, consideration of the waiver application pursuant to section 212(i) is analogous to and inclusive of consideration under section 212(a)(9)(B)(v). As a result, review of the instant application by the AAO is the same whether or not the applicant is subject to unlawful presence provisions.

Counsel contends that the decision of the district director misapplies *Matter of Cervantes-Gonzalez* in stating that the applicant's spouse was aware of the applicant's status at the time of their marriage and knew that he may have to face the decision of being separated from the applicant. *Memorandum of Law and Fact in Support of Administrative Appeal*, dated June 4, 2004. Counsel asserts that the applicant, unlike the alien in *Matter of Cervantes-Gonzalez*, was not in removal proceedings at the time of her marriage. *Id.* at 3. The AAO finds that the decision of the district director analogizes the instant applicant's lack of legal status in the United States and her admission into the United States by fraud or willful misrepresentation to the status of the alien in *Matter of Cervantes-Gonzalez* who was in removal proceedings at the time of his marriage. The AAO acknowledges the assertion of counsel that this analogy is erroneous, but finds that the district director would not have rendered a finding of extreme hardship in the absence of this ruling and therefore the error, if there is one, is harmless.

Counsel further contends that the applicant's husband will suffer extreme hardship if he relocates his family to Mexico in order to remain with the applicant. Counsel asserts that the applicant's spouse does not have strong family ties in Mexico because he was born in the United States. *Id.* at 4-5. Counsel states that the applicant's spouse is gainfully employed in the United States and will be unable to sustain himself and his family in the manner in which they are accustomed in Mexico. *Id.* at 5. Counsel indicates that the applicant's spouse may be unable to obtain employment in Mexico because he does not speak Spanish. *Id.* Counsel further contends that the children of the applicant and her spouse will suffer as a result of the lack of educational opportunity and insufficient health care in Mexico. *Declaration of Mercedes E. Gwinn*, dated October 7, 2002. *See also Declaration of Philip B. Gwinn*, dated October 8, 2002 and *Letter from Centro Romero.*

Counsel fails to establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment, access to educational opportunities for his children and access to adequate medical care. Counsel states that the applicant's spouse will have difficulty caring for the couple's children in the absence of the applicant. The record fails to demonstrate that the applicant is the only person able to provide care for the couple's children. 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* 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. Moreover, the AAO notes that 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he 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.

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 she 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. *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.