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U.S. Citizenship and Immigration Services

[redacted]

MAR 15 2005

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, San Francisco, 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 procured admission into the United States on or about February 2, 1990, by presenting a U.S. birth certificate not belonging to him. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is the son of a U.S. citizen father who filed an alien relative petition on his behalf. His mother is a lawful permanent resident (LPR), and his wife is a U.S. citizen. The applicant seeks the above waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship to his qualifying relatives and denied the application accordingly. On appeal, counsel asserts that the applicant's wife will experience severe emotional and financial hardship whether she remains in the U.S. without the applicant or relocates to Mexico to remain with him. Counsel also contends that the applicant's parents will suffer extreme hardship on account of his inadmissibility. Counsel points out that the applicant has two U.S. citizen children, ages seven and two and a half years old, and counsel states that the effect of the applicant's inadmissibility on his children would cause great distress to his wife. In support of these assertions, counsel submits statements by the applicant's wife, his father, and other relatives and supporters, a psychological evaluation for the applicant's wife, letters from educators regarding the applicant's son, and country conditions information on Mexico.

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 may, in the discretion of the Attorney General, 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 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.
>
> (2) No court shall have jurisdiction to review a ecision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as

§ 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, § 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

> (a) [I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . *See 18 U.S.C. § 1546.*

In this case, the applicant knowingly obtained a U.S. birth certificate and used the document to procure admission into the United States in violation of § 212(a)(6)(C). Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez, supra,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relatives include his U.S. citizen spouse and father and his LPR mother. Counsel contends that the applicant's wife would undergo hardship if she remains in the United States, because it would be difficult for her to raise their two children by herself, the applicant probably would not be able to obtain suitable employment in Mexico in order to contribute to his family's budget, and her current depressed mood would worsen in her husband's absence.

Counsel submits documentation from a speech pathologist and special education teacher indicating that the applicant's seven-year-old son has required speech therapy. In a letter dated January 26, 2004, speech and

language pathologist Peggy Weber wrote that the applicant's wife could encounter difficulty as a single parent trying to cope with a child "who has a possible language learning disability exacerbated by behavior issues..." On February 2, 2003, [redacted] a special education teacher acquainted with the applicant's son, wrote that she felt that if the applicant were absent, his son might regress in his school behavior. She expressed the opinion that raising a child "with special needs" presents great challenges to single parents, most of whom cannot provide sufficient support and involvement. The record supports the claim that the applicant's son has required speech therapy and has had difficulty adjusting to school, but the evidence does not indicate exactly what his "special needs" at home are, or what types of difficulties the applicant's wife has had and could have in raising him. The AAO acknowledges that raising children in a single-parent household is not an easy task, but it also appears from the evidence that some members of the applicant's family and his wife's family are available to assist the applicant's wife with childcare. The evidence on the record does not establish that she would face challenges and difficulties greater than those facing other parents whose partners are inadmissible. Regarding the alternative situation, that is, where the applicant's wife relocates with the children to Mexico, Ms. Weber wrote that the applicant's son would have difficulty adjusting to the Mexican educational system. Nevertheless, the record does not establish that moving her children to Mexico would result in extreme hardship to the applicant's wife.

The country conditions evidence on the record indicates that Mexico has had a weak economy in recent years, but it does not establish that the applicant would be unable to contribute to his family's finances while he is in Mexico. The AAO recognizes that the applicant's wife might have to make financial adjustments, but the documentation on the record does not establish that the applicant's wife has no other source of income or that she would be unable to maintain a household in the applicant's absence. The applicant's wife writes in her statement on appeal that she believes she will not be able to get a job in Mexico in her current field of laboratory technology; however, there is no evidence to support this assertion. 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 applicant's wife writes that she intends to pursue a course of study in nursing, but she has recently discovered that she herself has a learning disability. Despite this challenge, she also notes that she was the top student in her high school class, and she always enjoyed school, even though she realized that she had to work very hard to succeed academically. The applicant's wife expresses concern that the applicant's absence, in view of her newly discovered learning disability, will render her goal of obtaining a nursing degree even more difficult. The evidence on the record does not support this claim, however, nor is there documentation in support of her contention that she would not be able to become a nurse in Mexico.

On appeal, counsel submits a psychological evaluation performed by [redacted] MFT. Mr. [redacted] interviewed the applicant and his wife for over two hours on December 20, 2003 in order to assess the hardship the applicant's wife would undergo if the applicant is removed. Mr [redacted] indicated in his report of December 22, 2003 that the applicant's wife strongly desired to pursue her dream of becoming a U.S. citizen; however, in her statement of February 10, 2004, the applicant wrote that she already was a U.S. citizen. The record contains no copy of a certificate of naturalization for the applicant's wife; therefore, this inconsistency in the record remains unresolved. Mr [redacted] stated that the applicant's wife suffers from major depression, and she needs psychiatric care and psychotherapy. He expressed the opinion that the applicant's inadmissibility could result in a worsening of the applicant's wife's emotional health, which could

lead to "hospitalizations and overt suicidality on her part." The evaluation does not indicate how Mr. [redacted] arrived at this conclusion, given the lack of any prior therapeutic relationship with the applicant's wife. In her statement of February 10, 2004, the applicant's wife stated that she had not yet had time to procure medical treatment for her mental condition. While the applicant's wife indicated that she felt very depressed, she did not mention having any suicidal thoughts. The AAO acknowledges that the applicant's wife bears an emotional burden, but the evidence does not establish that the mental and/or emotional hardship resulting from the applicant's inadmissibility, whether his wife remains in the United States or relocates to Mexico, exceeds that which other spouses of aliens removed often experience.

In *Cervantes-Gonzalez, supra,* the Board cited *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970) (citations omitted), stating that:

> [E]ven 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 than to say that the residence of one of the marriage partners may not be in the United States. *Cervantes-Gonzalez* at 567.

The applicant has failed to establish that his spouse would suffer extreme hardship based on the factors set forth in *Cervantes-Gonzales.* Moreover, although the applicant's father writes in a statement dated January 27, 2004 that he will suffer serious psychological damage if the applicant is removed, the record does not contain evidence that establishes this assertion. The AAO does not purport to diminish the emotional pain of such separations; however, the Ninth Circuit Court of Appeals stated in *Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991) 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, when considered in its totality, reflects that the applicant has failed to show that his spouse or parents would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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 § 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.