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

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JUL 18 2006

IN RE: APPLICANT: [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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing that she is a U.S. citizen for the purpose of obtaining a benefit under the Act (admission to the United States.) The applicant 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 with her permanent resident husband and U.S. citizen children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 21, 2004.

On appeal, counsel for the applicant asserts that the applicant did not commit fraud or misrepresentation, and thus she is admissible to the United States. *Brief in Support of Appeal*, dated May 10, 2004. Counsel contends that the applicant's husband will experience extreme hardship if the applicant's waiver application is denied, and that the district director failed to consider all elements of hardship in aggregate. *Id.*

The record contains a brief from counsel; statements from the applicant, the applicant's husband, and the applicant's daughter; a copy of the applicant's marriage certificate; a copy of a medical document for the applicant's husband; copies pay stubs and tax records for the applicant and her husband; a copy of the applicant's husband's permanent resident card; a copy of the applicant's birth certificate; letters verifying the applicant's and her husband's employment, and; a form I-864, Affidavit of Support, executed by the applicant's husband on behalf of the applicant. 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.
>
> (ii) Falsely claiming citizenship. –
>
> (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 . . . is inadmissible.
>
> . . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

Applicants who made a false claim to U.S. citizenship prior to September 30, 1996 are eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record reflects that in 1990 the applicant attempted to enter the United States by claiming that she is a U.S. citizen. She stated that she borrowed a fraudulent birth certificate from a woman, and she was detained by U.S. immigration authorities for five or six days. *Sworn Statement from Applicant*, dated June 19, 2003. Thus, the applicant made a false claim to U.S. citizenship for the purpose of obtaining a benefit under the Act (admission to the United States.) Therefore, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii).

Counsel asserts that the applicant did not commit fraud or misrepresentation, and thus she is admissible to the United States. *Brief in Support of Appeal*, dated May 10, 2004. Counsel appears to base this assertion on the applicant's lack of understanding of U.S. immigration law at the time she made a false claim to U.S. citizenship, and the applicant's motive for entering the United States. *Id.* However, the applicant clearly stated that she attempted to enter the United States using fraudulent documentation that she borrowed from another individual in order to represent that she is a U.S. citizen. *Sworn Statement from Applicant.* The applicant's statement reflects that she was aware that she was falsely representing her citizenship at the time of her attempted entry. *Id.* The fact that the applicant did not fully understand the legal ramifications of this immigration violation does not negate that she falsely represented that she is a U.S. citizen for the purpose of

procuring entry to the United States. Regarding the applicant's motive for entering the United States, section 212(a)(6)(C)(ii) of the Act merely contemplates whether an individual made a false claim to U.S. citizenship "for the purpose of obtaining a benefit under the Act." Section 212(a)(6)(C)(ii) of the Act. The applicant's motive for seeking such benefit is not a relevant concern. Based on the foregoing, the applicant has not established that she was erroneously deemed inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

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 hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant's husband expressed that he is close with the applicant, and that separation is emotionally difficult. *Statement from Applicant's Husband,* dated August 1, 2003. He explained that he suffered a knee injury that continues to cause health complications, including Osteoarthritis. *Id.* He stated that he experiences fatigue and dizziness due his medication, and that the applicant takes care of him. *Id.* The applicant's husband indicated that he works as a gardener, and that he must perform tasks that are physically demanding. *Id.*

The applicant's husband indicated that his and the applicant's children would experience hardship if they relocate to Mexico, as they would lose the benefits of education in the United States. *Id.*

The applicant stated that she needs to help her husband financially, and that her income helps her family live a better life. *Statement from Applicant*, dated August 5, 2003. She explained that she is the primary source of emotional support in her family. *Id.* at 2. She provided that relocation to Mexico would be a significant emotional hardship for her husband and children. *Id.* She asserted that family separation is not under consideration, implying that her husband and children will relocate to Mexico with her if her waiver application is denied. *Id.* She stated that if she returns to Mexico with or without her daughters, her family's values will be disrupted, creating emotional hardship for all of them. *Id.*

Counsel asserts that the applicant's husband will experience extreme hardship if the applicant's waiver application is denied. *Brief in Support of Appeal*, dated May 10, 2004. Counsel contends that the district director failed to consider all hardships to the applicant's husband in aggregate. *Id.* at 7. Counsel asserts that the applicant's husband and children will experience significant economic hardship if the applicant is compelled to depart the United States. *Id.* Counsel referenced the applicant's husband's knee injury and its affect on his ability to work. *Id.* at 8. Counsel explained that the applicant's husband would be left alone in the United States to care for their children if the applicant departs. *Id.* Counsel provided that the applicant's husband would suffer extreme personal, emotional, physical, and economic hardship. *Id.*

Counsel asserts that Citizenship and Immigration Services (CIS) cannot properly use the applicant's underlying fraud as a negative factor in her case. *Id.* at 4-6. Counsel states that the positive factors outweigh the negative in this matter. *Id.* at 8-9.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant's daughters will endure if the applicant departs. However, hardship to the applicant's children is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant's daughters will bear significant consequences if separated from the applicant, only hardship to the applicant's husband may be properly considered in this section 212(i) waiver proceeding.

Direct hardship to an applicant's children is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's hardship will create emotional hardship for the qualifying relative.

The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his daughters' loss of the applicant's daily presence. However, the applicant has not established that her husband will experience psychological

consequences that are more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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. Thus, the applicant has not shown that her husband's emotional hardship will rise to the level of extreme hardship.

Counsel contends that the applicant's husband will experience significant economic hardship if the applicant departs the United States. The AAO recognizes that the applicant's family earns a modest income. Yet, the applicant has not shown that, should her husband remain in the United States with their two daughters, her husband would be unable to meet his financial needs in her absence. The record reflects that the applicant's husband earned $9.00 per hour, working an average of 40 hours per week, as of June 17, 2003. *Letter from* [redacted] dated June 17, 2003. Thus, assuming the applicant's husband works 52 weeks per year, his annual compensation totals approximately $18,700. Accordingly, the applicant's husband earns an income above the 2006 poverty line for a family of three, evaluated as $16,600. *See Form I-864P, Poverty Guidelines*. It is noted that the applicant has not submitted documentation to show her household's regular expenses, thus the AAO lacks sufficient evidence to fully consider the financial impact her departure would have on her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has failed to establish that her husband will experience economic difficulty that rises to the level of extreme hardship.

The applicant's husband explained that he injured his knee, and he suggests that this injury increases his dependence on the applicant. However, the single medical record that discusses the applicant's husband's injury is brief and fails to fully describe the severity or duration of his condition. *Letter from* [redacted], dated July 25, 2003. While the applicant's husband implied that his injury affects his ability to engage in labor for his employment, the record shows that he is able to perform his duties 40 hours per week. Thus, the applicant has not established that her husband's knee injury would contribute significantly to hardship he would suffer should she depart the United States.

It is noted that the applicant's husband may relocate to Mexico with the applicant if he chooses in order to maintain family unity. As he is a native of Mexico, he would not be compelled to adapt to an unfamiliar language and culture should he return there. The AAO acknowledges that employment and educational opportunities are more limited in Mexico. Thus, it is understood that the applicant's husband would experience the challenge of finding new employment, and emotional hardship in observing his children relinquish the benefits of education in the United States. However, as a permanent resident, the applicant's

husband is not required to reside outside the United States as a result of the applicant's inadmissibility. As discussed above, the applicant has not shown that remaining in the United States constitutes extreme hardship for her husband.

All instances of hardship to the applicant's husband have been considered separately and in aggregate. Based on the foregoing, the applicant has not submitted sufficient evidence to show that the instances of hardship that will be experienced by her husband, should she be prohibited from remaining in the United States, rise to the level of extreme hardship.

Counsel asserts that Citizenship and Immigration Services (CIS) cannot properly use the applicant's underlying fraud as a negative factor in her case. *Id.* at 4-6. Counsel states that the positive factors outweigh the negative in this matter. *Id.* at 8-9. However, a balancing of positive and negative factors is only performed when assessing whether the applicant warrants a favorable exercise of discretion. If an applicant fails to first establish that a qualifying relative will experience extreme hardship, the district director lacks discretion to approve a waiver application. *See* section 212(i)(1) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would have been served in discussing whether she merits a waiver as a matter of discretion. Thus, whether the applicant's claim to U.S. citizenship that led to her inadmissibility was a negative discretionary factor had no bearing on the district director's decision, and need not be addressed further.

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.