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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DENVER, CO Date: MAR 03 2006

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, CO 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 under 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 an immigration benefit from the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized U.S. citizen and 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 his father.

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 8, 2004.

On appeal, counsel contends that the applicant does not need to file a waiver application because he did not willfully misrepresent himself to procure an immigration benefit. Counsel asserts that the district director erred in denying the application for a waiver by not taking into account the extreme hardship to the applicant's father and the presence of family ties in the United States.

In support of these assertions, counsel submits a brief, a statement from the applicant, a statement from the applicant's father, and the applicant's birth certificate. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on November 9, 1993 the applicant submitted a fraudulent asylum application signed by him on October 27, 1993. Counsel's brief, the applicant's statement, and the father's statement assert that the applicant's father went to an "immigration counselor" for help with filing an alien relative petition for his son. The "immigration counselor" told the father that he could obtain an employment authorization card for the applicant and gave him the last page of an asylum application (Form I-589) for the applicant to sign. The applicant signed the form and submitted the fraudulent application to the Immigration Service eventually

obtaining and using an employment authorization card. The applicant and his father assert that they did not know that the Form I-589 was an asylum application. They state that neither of them read or spoke English at the time and they would not have submitted the document if they knew it was false.

The AAO notes that it is the responsibility of the applicant to read and review all applications submitted to the Immigration Service on their behalf. If the applicant cannot speak English then it is his responsibility to have the application translated to him. Therefore, the applicant is found to have willfully misrepresented himself in an attempt to procure an immigration benefit and requires a waiver of this bar to admission.

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 hardship suffered by the applicant's father. 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.

Counsel contends that the applicant's father would suffer extreme hardship if his son were to depart from the United States because at sixty years old he would be left to provide both emotional and financial support for his son's eight year old daughter. He also asserts that the applicant's daughter would suffer hardship as a result of being separated from her father and that the district director erred when he did not consider the daughter's hardship. *Brief in Support of the Appeal of the Decision of USCIS to Deny the I-601 Waiver.*

The AAO notes that in waiver proceedings under section 212(i) the only relevant hardship to be considered is the hardship suffered by the applicant's father. Any hardship suffered by the applicant's child is irrelevant as she is not a qualifying relative.

The record reflects that the mother, maternal grandparents, aunts, and uncles of the applicant's daughter are either legal permanent residents or U.S. citizens. There was no evidence submitted to show why these family members could not help with the emotional and financial support of the applicant's daughter.

In addition there was no evidence submitted concerning the possible extreme hardship to the applicant's father if he were to relocate with his son to Mexico.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.