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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 29 2006

IN RE: [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, 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 under § 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 a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen 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. On appeal, counsel contends that the applicant did not commit fraud or willful misrepresentation; hence, he is not inadmissible and does not require a waiver. Counsel asserts that even if the applicant were inadmissible, he is eligible for a waiver, since the evidence establishes extreme hardship to his spouse. The AAO has reviewed and considered the entire record 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 the applicant entered the United States without inspection in 1989. On January 10, 1995 he submitted an asylum application in which he claimed to be a Guatemalan citizen with a well-founded fear of persecution in Guatemala. Given that the applicant is not Guatemalan, his actions constituted willful misrepresentation in order to gain a benefit under the Act, and he is inadmissible pursuant to § 212(a)(6)(C) of the Act.

Counsel asserts, however, that an unscrupulous preparer took advantage of the applicant, who was completely unaware of the nature of the application he was submitting in 1995. In his own statement on appeal, the applicant maintains that he signed forms written only in English, which he could not read well; however, the record includes an American Baptist Churches (ABC) registration form in both Spanish and English that the applicant signed. The ABC registration form states in Spanish that the applicant "requests a new asylum interview and decision." The ABC form contains the applicant's signature; therefore, the AAO finds he was

aware of the fact that he was applying for asylum. Moreover, although the applicant writes that he was told that the asylum application preparer was arrested for committing immigration fraud, no documentation in support of this claim is found on the record.

A waiver under § 212(i) of the Act depends first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the alien himself or his children is irrelevant to § 212(i) waiver proceedings. In the case at hand, the only relevant hardship would be that suffered by the applicant's wife. 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 Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include the presence of an LPR 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 spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant, because she has substantial family ties in the United States (her parents and two brothers), and her standard of living would decrease in Mexico. Counsel maintains that the applicant's wife would be unable to find work in Mexico, and that she would find it hard to readjust to life in her native country. The record does not include any evidence regarding the nature of the relationship and frequency of contact between the applicant's wife's and her U.S. relatives, nor does it indicate that she would be unable to maintain adequate contact with them should she move to Mexico. There is also no evidence with respect to her family ties in Mexico. Also, there is no documentation in support of claims that the applicant's wife would be unable to find employment in Mexico or that the cultural differences between the United States and Mexico would cause her greater than usual suffering. The AAO is unable to conclude that the applicant's wife would suffer extreme hardship should she choose to relocate to Mexico.

The record also does not establish extreme hardship to the applicant's spouse if she remains in the United States without the applicant. The applicant's spouse states on appeal that she would suffer emotionally and financially if the applicant is removed. However, there is no documentary evidence on the record establishing that the applicant's wife would be unable to cope with the emotional or financial hardship resulting from his inadmissibility.

The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. However, the applicant's wife's situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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. Also, 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 record fails to establish that the applicant's spouse would suffer extreme hardship on account of 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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.