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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: ATLANTA, GEORGIA Date: APR 23 2007

IN RE: [redacted]

APPLICATIONS: 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: SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 misrepresenting his criminal history to an immigration officer, in order to obtain an immigration benefit. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 27, 2005.

On appeal, the applicant's wife claims "[i]t would be an extreme hardship if [she] were to live alone without [the applicant's] help." *Letter attached to Form I-290B*, filed July 21, 2005. The applicant's wife states she suffers from rheumatoid arthritis and the applicant does everything for her. *Id.* The AAO notes that the applicant failed to provide any additional evidence on appeal besides a copy of two handicap parking permits.

The record includes, but is not limited to, letters from the applicant's wife, court documents regarding the applicant's arrests, and various tax documents for the applicant's wife and stepson. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> (i) In general.-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.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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...

In the present application, the record indicates that the applicant was convicted of making harassing phone calls on February 21, 1996. On March 13, 1996, the applicant was convicted of driving while intoxicated, no proof of insurance, and open container. On December 11, 1996, the applicant was found to have violated the conditions of his probation from his March 13, 1996 conviction. On March 10, 1997, the applicant was convicted of driving with a suspended or revoked license. On the applicant's adjustment application, he claims he entered the United States without inspection in August 1997. On October 12, 1998, the applicant was arrested for simple battery. On April 26, 2001, the applicant married [redacted], a United States citizen. On May 22, 2001, the applicant filed a Form I-130 and an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 24, 2003, the District Director denied the Form I-485, finding the applicant misrepresented material facts to the immigration officer regarding his criminal history. On January 7, 2004, the applicant filed a Form I-601. On June 27, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 applicant does not establish extreme hardship to his United States citizen spouse if she remains in the United States or if she joins him in Mexico. The applicant's wife claims she suffers from "severe rheumatoid arthritis," which makes doing everyday chores "very hard for [her]." *Letter attached to Form I-290B, supra.* The applicant's wife claims she has been "under doctor's care for years;" however, the AAO notes that the applicant failed to submit any medical documentation regarding his wife's health problems besides a copy of two handicap parking permits. *Id.* The applicant's wife states the applicant does "[a]ll household chores, work in the yard, personal chores such as check writing and shampooing [the applicant's wife's] hair." *Id.* The AAO notes that the applicant's wife submitted letters on December 19, 2005, May 25, 2006, and April 9, 2007 regarding an injury the applicant suffered. The applicant's wife states the applicant "seriously injured his ankle...[and] he is unable to work." *Letter from* [redacted] filed December 19, 2005. The applicant's wife states the applicant "is unable to walk for more than a few minutes and has no motion in his

ankle...[They] cannot go anywhere together anymore. Walks to simple retail stores or anywhere else are impossible." *Letter from* [redacted], filed May 25, 2006. The AAO notes that because of the severity of the applicant's injury, he cannot continue to help his wife with the upkeep of the home or with her medical problems. Additionally, the applicant has not established that his spouse is dependent upon him to perform her daily activities. The applicant does not establish extreme hardship to his wife if she remains in the United States, maintaining her employment, access to adequate health care, and close proximity to her son. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. No documentation was submitted to establish that the applicant's wife would experience a major financial hardship as a result of the separation from the applicant. The applicant's wife's statements regarding the extreme hardship she would suffer if the applicant were not allowed to enter the United States were vague and not supported by documentation. In regards to the applicant's criminal record, the applicant's wife states "[h]e continues to be remorseful regarding the failure to admit his misdemeanors back in 1996. A lot of the problem[s] also stemmed from a complete lack of communication as well as a general lack of respect for our way of life." *Letter attached to Form I-290B, supra.* The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

In addition, the applicant does not establish extreme hardship to his United States citizen spouse if she joins him in Mexico. The AAO notes that the applicant made no claim that his wife would suffer any hardship if she joined the applicant in Mexico. Additionally, the applicant makes no claim that he cannot return to Mexico and obtain a job in Mexico that would help support his wife. He is a native of Mexico, who spent all of his formative years in Mexico, and speaks Spanish. The applicant's wife states the applicant cannot work because of his ankle injury; however, Dr. [redacted] stated the applicant can "do seated duty." *Medical report by* [redacted] *M.D., Southeastern Orthopedic Center*, dated September 27, 2006. The AAO, therefore, finds that the applicant failed to demonstrate how his wife would suffer any extreme hardship if the applicant were removed to Mexico.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's wife will endure hardship as a result of

separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal 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 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.