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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: JAN 18 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 (U.S.) 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 procured admission into the United States by fraud or willful misrepresentation on January 2, 1997. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to show that his qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated May 13, 2005.

On appeal, counsel states that the applicant's wife and child will suffer extreme hardship as a result of the applicant's inadmissibility. Counsel asserts that the director did not take into account the hardship to the applicant's spouse as a result of the hardships faced by the applicant's child and that no standard for extreme hardship was cited by the Service in its decision. *Counsel's Letter,* dated August 23, 2005.

The record indicates that on January 2, 1997 the applicant applied for admission to the United States by presenting a fraudulent Form I-94 card indicating that he was granted lawful permanent residence under the name [redacted] with a birth date of August 1, 1975. This Form I-94 was lawfully issued to [redacted] and the applicant's photograph was substituted in place of the lawful owner's photograph.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences due to separation is not considered in section 212(i) waiver

proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully resident spouse and/or parent. 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 the instant case, the applicant must initially establish that his inadmissibility will result in extreme hardship to his U.S. citizen spouse.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. In his brief, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico because she has no family in Mexico and would have to leave her entire family who lives in Arizona. Counsel also asserts that the applicant's child would lose his emotional bond with his grandparents and the applicant's spouse would have to give up their home. Counsel states that the applicant's spouse would not easily find employment in Mexico. In her statement, the applicant's spouse also states that she was born in the United States and that it would be hard for her parents if she moved to Mexico. She states that she is concerned for her six-year-old son who has started preschool in the United States. She states that the applicant would not be able to find employment to support their family in Mexico. The AAO recognizes that the applicant's spouse will suffer hardships as a result of relocating to Mexico, however the current record does not establish that these hardships rise to the level of extreme hardship. Counsel submitted no documentation to show that the applicant or his spouse would be unable to find employment in Mexico. The applicant's spouse states that the applicant has family in Mexico, but no documentation was submitted showing whether these family members could or could not help the applicant and his spouse upon their relocation to Mexico. Counsel and the applicant must submit documentation to support their assertions. In the current application they have not done so, therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel asserts that the applicant's spouse will suffer financially if the applicant is removed from the United States. He contends that the applicant and his spouse own a home together and the applicant's spouse's income is not sufficient to meet their current debts. The applicant states that if he is removed, his spouse will be forced to claim bankruptcy. The applicant's spouse states that their mortgage payment is $900.67 a month, their car payment is $467.46 a month and their son's preschool is $110.00 per week. The applicant did submit documentation establishing that his monthly mortgage payment was $900.67 per month. The record also includes a February 6, 2004 letter from the spouse's employer stating that she earns $22,360 annually. However, the applicant's spouse has not established that her family in the United States would be unable to help her financially if the applicant were removed. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, is faced by many individuals separated as a result of removal and does not rise to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of removal 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 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(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.