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

PUBLIC COPY

#12

[redacted]

FILE: [redacted] Office: SEATTLE (YAKIMA), WA Date: JAN 26 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, Seattle, Washington. 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 Nicaragua who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for using a false birth certificate in order to apply for asylum relief. The record indicates that the applicant is married to a lawful permanent resident of 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 reside in the United States with his lawful permanent resident wife, one United States citizen child, and two United States citizen step-children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated May 18, 2005.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his lawful permanent resident wife and United States citizen children. *Form I-290B*, filed June 15, 2005.

The record includes, but is not limited to, an affidavit from the applicant's spouse, birth certificates for the applicant's United States citizen child and step-children, birth certificates for the applicant, numerous letters of reference from the applicant's friends and acquaintances, and documents from the applicant's court proceedings before the Seattle, Washington Immigration Court, the Board of Immigration Appeals (BIA), and the Ninth Circuit Court of Appeals (9th Circuit). 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 entered the United States, at El Paso, Texas, without inspection on May 4, 1994. The applicant claimed his name was [redacted] in order to file an Application for Asylum (Form I-589). On April 11, 1995, an immigration judge denied the applicant's Form I-589. The applicant appealed the immigration judge's decision to the BIA, which was dismissed on January 4, 1996. The applicant then appealed the BIA decision to the 9th Circuit, which was dismissed on September 11, 1996. A Warrant of Deportation was issued on December 4, 1996 and the applicant did not appear for his enforced departure on January 14, 1997. On February 7, 1997, the applicant, using the name [redacted] married [redacted] a United States citizen. On February 8, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), under the Nicaraguan Adjustment and Central American Relief Act (NACARA). The AAO notes that on the Form I-485, the applicant listed he was still married to [redacted] On November 8, 2001, the District Director denied the Form I-485 finding the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for using a false birth certificate in order to apply for asylum relief. On November 23, 2001, the applicant married [redacted] a lawful permanent resident.[1] On November 28, 2001, the applicant filed a Motion to Reopen and a Form I-601. On May 18, 2005, the District Director denied the motion to reopen and the Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident 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 deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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 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.

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[1] The AAO notes that the applicant failed to provide any evidence of his divorce from [redacted]

The applicant's spouse asserts that she would face extreme hardship if she relocated to Nicaragua in order to remain with the applicant. The applicant's spouse is a national and citizen of Mexico. She claims that she cannot live in Nicaragua because she is Mexican and the applicant could not live in Mexico, because he is Nicaraguan. *Declaration of* [redacted] dated June 13, 2005. The applicant's spouse states she has lived with the applicant since July 1998. *Id.* The applicant's spouse states she does not work outside of the home because she takes care of her autistic son, the applicant's stepson. *Id.* She claims the applicant supports "the family financially as well as emotionally." *Id.* The AAO notes that the applicant's spouse receives social security for two of her children, as a benefit from their father's death. Additionally, the applicant's spouse states that during cherry season, she works a night shift at [redacted], because the applicant can stay home with the children. *Id.* The applicant's spouse claims that it would be difficult to find a job or a house in Nicaragua because the economy is "very bad." *Id.*

Counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her part-time employment, access to adequate health care, and education for her children. As a lawful permanent resident, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Nicaragua, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. 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). The applicant's spouse's statements regarding her inability to relocate to Nicaragua were vague and not supported by documentation. The AAO, therefore, finds the applicant has failed to establish extreme hardship to his spouse if she accompanies him to Nicaragua.

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 9th Circuit 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 deportation or exclusion and does not rise to the level of extreme hardship.

Counsel requests that the applicant's Form I-485 be transferred to the Seattle, Washington Immigration Court, which issued the final order against the applicant. Counsel cites 8 C.F.R. § 245(m)(1)(iii), which states "[i]n the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, [the director shall] refer the decision to deny the [adjustment] application by filing a Form I-290C, Notice of Certification, with the Immigration Court that issued the final order." However, under 8 C.F.R. § 245.13(a)(3), an alien is eligible to apply for adjustment of status under NACARA, if he "[i]s not inadmissible

to the United States for permanent residence under any provisions of section 212(a) of the Act, with the exception of paragraphs (4), (5), (6)(A), (7)(A) and (9)(B). If available, an applicant may apply for an individual waiver." Since the applicant was found to be inadmissible under 212(a)(6)(C)(i) of the Act, he must apply a waiver and the AAO finds that he is ineligible for the waiver; therefore, he is ineligible to apply for adjustment of status under NACARA.

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)(9)(B) 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.