identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 25 2013
[consolidated therein]

IN RE: Applicant: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting an altered Form I-151. The record indicates that the applicant is the father of a United States citizen and 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 lawful permanent resident wife and United States citizen daughter.

The Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated June 22, 2006.

On appeal, the applicant, through counsel, "contests the finding of the adjudicating officer with regard to the extreme hardship suffered by the applicant's spouse." *Form I-290B*, filed July 24, 2006.

The record includes, but is not limited to, counsel's brief, a letter from the applicant's daughter, and a psychological evaluation on the applicant and his wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 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 [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 [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 AAO notes that the record contains several references to the hardship that the applicant's adult daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that on April 20, 1972, the applicant attempted to enter the United States by presenting an altered Form I-151. On April 21, 1972, an Order to Show Cause (OSC) was issued against the applicant. On May 9, 1972, the applicant was ordered deported from the United States and a Warrant of Deportation (Form I-205) was issued against the applicant. On May 10, 1972, the applicant was deported from the United States. On April 29, 2005, the applicant's daughter became a United States citizen. On August 24, 2005, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until February 23, 2006. On September 9, 2005, the applicant's daughter filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 12, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 30, 2005, the applicant was paroled into the United States. On January 12, 2006, the applicant's Form I-130 was approved. On April 19, 2006, the applicant filed a Form I-601. On May 6, 2006, the applicant's Form I-485 was denied. On May 16, 2006, the applicant filed a motion to reopen the denial of the Form I-485. On June 5, 2006, the Director reopened the applicant's Form I-485; however, on June 7, 2006, the Director denied the applicant's Form I-485, again. On June 22, 2006, the Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

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 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 (Board) 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.

Counsel asserts that the applicant's wife will suffer extreme hardship if the applicant is removed to Mexico. Counsel states the applicant's wife is suffering psychological and emotional trauma "due to the stress caused by [the applicant's] possible deportation." *Counsel's brief*, dated August 11, 2006. [redacted] diagnosed the applicant's wife with adjustment disorder with mixed anxiety and depression and major depression. *See psychological evaluation by* [redacted], dated April 3, 3006. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's wife and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that [redacted] diagnosed the applicant with adjustment disorder with mixed anxiety and depression and major depression. *Id.* However, as noted above, hardship the applicant himself experiences upon removal is irrelevant to section 212(i) waiver proceedings. The applicant's daughter states that she is "suffering from depression and anxiety, loss of appetite, lack of concentration, [and] difficulty sleeping.... [Her] parents' situation is of great concern to [her] and [her] health has been deteriorating as a result." *Letter from* [redacted] dated March 30, 2006. The AAO recognizes that the applicant's daughter may be suffering some hardship as a result of her father's immigration status; however, the applicant's daughter is a not a qualifying relative for a waiver under section 212(i) of the Act. Additionally, the AAO notes that the applicant's adult daughter is married and employed. The applicant's daughter states the applicant's wife "is suffering from high blood pressure." *Id.* The AAO notes that there was no documentation submitted establishing that the applicant's wife is suffering from any medical conditions. Additionally, there was no evidence submitted establishing that she could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive medical treatments. Moreover, the AAO notes that the applicant's wife is a native of Mexico, who spent her formative years in Mexico, she speaks Spanish, and there is evidence that the applicant and his wife have family ties in Mexico. *See psychological evaluation by* [redacted] ***supra; see also*** *counsel's brief, supra.* The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, in close proximity to her family. The applicant's daughter states her mother "feels very strongly that going back to Mexico is not an option." *Letter from* [redacted], *supra.* As a lawful permanent resident of the United States, 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. Counsel claims that the

applicant's wife "relies on [the applicant] not just for her emotional well being, but also for her financial stability." *Counsel's Brief, supra.* The AAO notes that the applicant is currently unemployed. *See psychological evaluation by [redacted], supra.* Additionally, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his wife'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).

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 Board 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 wife 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)(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.