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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 21 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Mexico, attempted to procure entry to the United States on February 14, 2002 by presenting a Form I-94 containing a fraudulent Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, with an A number belonging to another individual. *See Record of Sworn Statement in Proceedings,* dated February 14, 2002. Consequently, she was ordered removed in February 2002, and was removed from the United States on February 14, 2002. *See Order of Removal,* dated February 14, 2002 and *Notice to Alien Ordered and Removed/Departure Verification,* dated February 14, 2002. The applicant attempted to re-enter the United States on March 9, 2002 by presenting a fraudulent Form I-512, Authorization for Parole of an Alien into the United States. *See Record of Sworn Statement in Proceedings,* dated March 9, 2002. Consequently, she was ordered removed in March 2002, and was removed from the United States on March 9, 2002. *See Order of Removal,* dated March 9, 2002 and *Notice to Alien Ordered and Removed/Departure Verification,* dated March 9, 2002.

The district director found the applicant to be inadmissible to the United States 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 attempted to procure entry into the United States by fraud and/or willful misrepresentation in February 2002. 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 her U.S. citizen spouse.[1]

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated March 20, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated May 16, 2007. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), 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

[1] The district director also noted that the applicant was inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, but did not detail the reasons for this finding in his decision. *Decision of the District Director,* dated March 20, 2007. The record does not appear to support this finding of inadmissibility. Nevertheless, as the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and or willful misrepresentation, as detailed above, it is not necessary for the AAO to analyze whether the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for unlawful presence.

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), 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 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...

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) 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. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

[redacted]

The applicant must first establish that her U.S. citizen spouse will suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. On appeal, this criteria has not been addressed by counsel, the applicant and/or the applicant's spouse.[2] As such, it has not been established that the applicant's U.S. citizen spouse will suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. On appeal, this criteria has not addressed by counsel, the applicant and/or the applicant's spouse. As such, it has not been established that the applicant's spouse, a native of Mexico, is unable to relocate abroad to reside with the applicant due to her inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to reside in the United States, and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.

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[2] The AAO notes that on appeal, counsel notes that she is in the process of obtaining evidence regarding hardship to the applicant's spouse, but obtaining such evidence requires additional time. *See Brief in Support of Appeal,* dated May 16, 2007. As of today, more than two years after the appeal submission, no additional evidence in support has been received by the AAO. As such, the record is considered complete and was reviewed in its entirety in rendering this decision.

Furthermore, 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services (USCIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

A number of documents submitted with the Form I-601, including a statement from the applicant's U.S. citizen spouse, are written in a foreign language. Any documents submitted by the applicant that are not in English and/or are not translated into English are not probative and will not be accorded any weight in this proceeding, as the AAO cannot determine whether said documentation supports the applicant's claims for a waiver.