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U.S. Citizenship
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MAR 15 2005

[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE, MARYLAND

Date:

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Baltimore, Maryland, 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 attempted to procure a nonimmigrant visa at the U.S. consulate in Mexico City in November 1999 by presenting, amongst other documents, a fraudulent Mexican social security document. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant entered the United States without inspection on or about December 5, 1999. The applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen wife and denied the application accordingly. On appeal, counsel asserts that the applicant is not inadmissible, because the documentation on the record does not establish that he misrepresented a material fact when he applied for a visa at the U.S. consulate. Counsel states that, if the applicant is found to be inadmissible, he should be allowed to present further evidence of the extreme hardship his wife would experience upon his removal to Mexico. In support of these assertions, counsel submits affidavits by the applicant and his wife.

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 may, in the discretion of the Attorney General, 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 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.
- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

In this case, the evidence on the record establishes that the applicant submitted a fraudulent Mexican social security document in an attempt to obtain a nonimmigrant visa with which to enter the United States, in violation of § 212(a)(6)(C). It need not be shown that the fraudulent document was absolutely necessary in order to obtain the visa; it is sufficient that the misrepresentation tended to shut off a line of relevant consular inquiry. In his affidavit on appeal, the applicant indicates that the document submitted was employment-

related, and employment is usually a material consideration in nonimmigrant visa applications. Evidence on the record indicates that, contrary to the applicant's statement on appeal, he admitted to the consular officer that he purchased the document in question. The applicant is, therefore, subject to the grounds of inadmissibility found at § 212(a)(6)(C).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, § 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez*, *supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is his U.S. citizen spouse. On appeal, the applicant writes that he and his wife were married in August 2001. In April 2002, his wife relocated to Colorado, while the applicant remained in Maryland. There is no evidence on the record that the applicant and his wife have resided together in the past three years. The applicant states that he sends his wife money regularly so that she can finish her university studies. The applicant writes that his wife would not be able to complete her studies without his assistance. The record contains no evidence that the applicant's wife is enrolled in any course of instruction or that she is unable to support herself without the applicant's financial assistance. The

submitted copy of the applicant's 2002 tax return does not provide sufficient documentation of his wife's current situation. The AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In her affidavit, the applicant's wife states that she relies on her husband emotionally, and that he is an important member of her family. Notwithstanding the fact that the applicant and his wife have not lived in the same state for several years, it can be acknowledged that his removal would cause his wife emotional hardship. However, the record does not establish that her hardship goes beyond that which is experienced by the families of most aliens in removal.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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 under § 212(i) of the Act, 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.