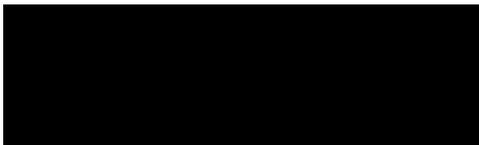


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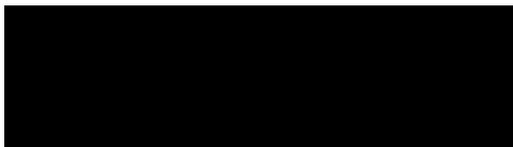
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IN RE:



PETITION: 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 PETITIONER:



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 District Director, Los Angeles, California, 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 pursuant to 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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 spouse and child.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 10, 2004.

On appeal, counsel asserts that the decision of the district director was in error and that the record demonstrates extreme and unusual hardship. *Form I-290B*, dated April 9, 2004. In support of these assertions, counsel submits a brief; an affidavit of the applicant's spouse, undated; a declaration of the applicant, dated January 13, 2004; a copy of the United States birth certificate of the applicant's spouse; a copy of the marriage license of the applicant and his spouse; a copy of the United States birth certificate of the applicant's child; letters of support for the applicant; a letter verifying the employment of the applicant and four color photographs of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on January 17, 1996, the applicant attempted to procure admission to the United States by presenting an I-94 with a counterfeit I-551 stamp to immigration officials.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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.

The AAO notes that the decision of the district director cites section 212(h) of the Act as the source of the applicant's eligibility for waiver. This citation is in error; the pertinent section of law to the instant application is section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from 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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 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; 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 states that the applicant has been living in the United States continuously since 1996 and that his life is characterized by hard work, human growth and faith in his religion. *Grounds Supporting Appeal to Denial of Waiver of Misrepresentation*, dated April 8, 2004. Counsel submits letters of support from co-workers stating that the applicant is a man of integrity with a good work ethic. *See Letter from Darrell L. Conger, dated April 5, 2004 and Letter from Glendon E. Frers, dated April 5, 2004.* Counsel further submits a character reference letter from the pastor of the Victory Outreach Santa Ana Spanish Ministry attesting to the fact that the applicant completed a program in the ministry's residential recovery services. *Letter from Robert H. Salazar, dated November 5, 2003.* While the AAO has reviewed the documents submitted by counsel in reference to the character of the applicant, the relevant focus of consideration in section 212(i) waiver proceedings is initially extreme hardship suffered by a qualifying relative, the applicant's spouse.

The applicant's spouse states that she is currently unemployed and will be unable to maintain the family's home in the absence of the applicant. *Affidavit of Nancy Garcia*, undated. The applicant's spouse states that she will not take her child to live in a dangerous third world country and deprive her of the advantages offered by life in the United States. *Id.* While counsel indicates that the applicant's spouse does not currently work outside of the home, the record fails to establish that the applicant's spouse is unable to obtain employment in order to financially support herself and the couple's child. The applicant's spouse states "there would be no way I could support both our daughter and myself" in the absence of the applicant, but fails to offer further explanation or documentation substantiating this claim. *Id.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel contends that separation from her father will be destructive and terrible for the applicant's daughter and as a result, will impose hardship on the applicant's spouse as her mother. *Grounds Supporting Appeal to Denial of Waiver of Misrepresentation*. U.S. 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, *Matter of Pilch* 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. Moreover, 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. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant or relocation to another country. However, her situation, based on the record, is typical to individuals confronted with deportation or exclusion 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 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.