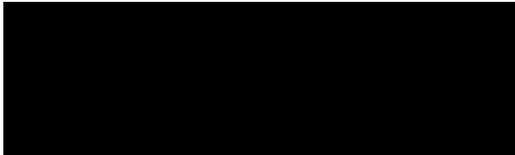




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:



Office: LOS ANGELES

Date: DEC 15 2006

IN RE:



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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application and it 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 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). The applicant is the son of lawful permanent resident parents and the father of U.S. citizen children. 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 parents and children.

The district director found that the applicant failed to establish that a qualifying family member would suffer extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of District Director*, dated March 14, 2005.

The record reflects that, on November 1, 1995, the applicant applied for admission at the San Ysidro, California, Port of Entry. The applicant presented a California Birth Certificate belonging to another under the name [REDACTED]. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and was removed from the United States and returned to Mexico. On June 4, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's lawful permanent resident father. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on January 21, 2005. The applicant testified that he had applied for admission into the United States by presenting a U.S. birth certificate belonging to another in 1995. The applicant testified that he reentered the United States without inspection or admission immediately thereafter.

On March 14, 2005, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant's father asserts that the applicant's waiver denial has caused him and his wife extreme distress and, as grandparents, they fear for their son's U.S. citizen children. *See Applicant's Brief*, dated March 29, 2005. To support his assertions, the applicant's father submitted the above-referenced brief, an affidavit from the applicant's father and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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.
- (ii) Falsely claiming citizenship. –
  - (I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit 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:

- (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 aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of a U.S. birth certificate belonging to another to attempt to procure admission into the United States in 1995. The applicant does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's parents, the only qualifying relatives.

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 at 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 pursuant to section 212(i) of the Act. 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 has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that the applicant’s father, \_\_\_\_\_ is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant’s mother, \_\_\_\_\_), is a native and citizen of Mexico who became a lawful permanent resident in 1996. The applicant’s parents have three other adult children who are either lawful permanent residents or U.S. citizens. The applicant’s parents also have a 17-year old daughter and a 15-year old daughter who are both U.S. citizens by birth. There are no birth certificates in the record for the applicant’s claimed U.S. citizen children. However, the applicant’s Form I-485 indicates that he has an eight-year old son and a six-year old son who are both U.S. citizens by birth. The record reflects further that the applicant is in his 30’s, \_\_\_\_\_ are in their 50’s and there is no evidence that \_\_\_\_\_ have any health concerns.

The applicant’s father contends that he and his spouse would suffer extreme hardship if the applicant were removed from the United States because the family is in a state of distress, they are concerned for the applicant’s children and it is causing them emotional suffering. In his affidavits, the applicant’s father states that the applicant has provided financially and morally to his family as a whole, the unity of their family is so strong they can’t express how catastrophic it would be to have the applicant missing and the applicant’s presence is deemed necessary to continue to raise his children and support the family as a whole with his hard work and dedication. He also states that he can no longer work full time, depending on the applicant’s monthly financial support and it would be very distressful and a financial burden on the family if the applicant were denied the waiver application because they would not have succeeded in gathering the entire family in the United States.

Financial records reflect that, in 2000, the applicant's father earned approximately \$19,559 through wages and business income. The record shows that, even without assistance from the applicant or other family members, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that [REDACTED] is unable to work or his ability to perform his work duties are diminished due to a mental or physical illness. There is no evidence in the record to indicate that [REDACTED] is unable to support himself, his wife and two teenage daughters either through his own employment and business income or with funds provided to him by his other adult children. [REDACTED] does not indicate that he and his wife would raise the applicant's children in the applicant's absence since he notes the presence of the applicant's children's biological mother. There is no evidence to indicate that the applicant's children's biological mother is not involved in the applicant's children's life or that the biological mother would be unable to provide physical and financial support to the applicant's children. Moreover, according to the record, [REDACTED] have family members in the United States, such as their other adult children, who may support them physically and financially in the absence of the applicant. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that [REDACTED] suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that the applicant's children would essentially be raised in a single parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] will not have succeeded in gathering their entire family in the United States, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

The applicant's father does not contend that he and [REDACTED] would suffer hardship if they were to return to Mexico with the applicant. The AAO is, therefore, unable to find that the applicant's father and mother would experience hardship should they return with the applicant to Mexico. Additionally, the AAO notes that, as lawful permanent residents, the applicant's father and mother are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if they remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or

judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident parents as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.