

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: **JUL 05 2006**

IN RE:

APPLICANT:

[REDACTED]

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:

[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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing that he is a U.S. citizen for the purpose of obtaining a benefit under the Act (admission to the United States.) The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife, child, and mother, and his permanent resident father.

The district director concluded that the applicant 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 September 16, 2004.

On appeal, counsel for the applicant contends that the applicant's wife, child, and parents will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, submitted October 18, 2004. Counsel further asserts that the district director applied an erroneous standard of extreme hardship, and failed to fully consider the consequences for all of the applicant's qualifying family members. *Id.*

The record contains a brief from counsel; a copy of the applicant's daughter's birth certificate; a copy of the applicant's mother's U.S. passport; a copy of the applicant's father's permanent resident card; statements from the applicant, the applicant's wife, and the applicant's mother; a copy of a document relating to the applicant's mother's medical treatment; copies of tax records for the applicant's parents; a Form I-864, Affidavit of Support, executed by the applicant's wife on his behalf; letters verifying the applicant's and his wife's employment; copies of tax records for the applicant and his wife; copies of the applicant's and his wife's birth certificates; a copy of the applicant's marriage certificate; a copy of the applicant's lease for residential property; a copy of the applicant's automobile insurance card, and; documentation regarding the applicant's prosecution for making a false claim to U.S. citizenship. The entire record was reviewed and considered in rendering this decision.

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.

Applicants who made a false claim to U.S. citizenship prior to September 30, 1996 are eligible to apply for a waiver of inadmissibility under section 212(i) 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 record reflects that on June 19, 1992, the applicant applied for admission to the United States at the Port of Entry at Calexico, California claiming to be a citizen of the United States. On the same date, he pleaded guilty to attempting to enter the United States illegally pursuant to 8 U.S.C. § 1325, for which he was sentenced to 45 days incarceration and a \$10 fine. Thus, the applicant made a false claim to U.S. citizenship for the purpose of obtaining a benefit under the Act (admission to the United States.) Therefore, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). The applicant does not contest his inadmissibility on appeal.

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 hardship suffered by the applicant's wife or parents. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife and parents would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant provided that he and his wife have been married since October 14, 2000, and they wish to have a family in the United States. *Statement from Applicant*, dated May 14, 2003. The applicant indicated that his parents and sisters are in the United States, and that he no contacts in Mexico. *Id.* at 2. The applicant explained that his mother is unemployed due to the fact that she has disc disease. *Id.* He provided that his father is retired, yet his parent's income is not sufficient to cover their expenses, thus the applicant provides financial support for them. *Id.* The applicant stated that he provides support for his parents due to their health problems. *Id.* He explained that he and his wife serve as caregivers for his mother-in-law who has been diagnosed with Bipolar Disorder and Depression. *Id.*

The applicant's wife stated that she and the applicant share a close relationship, and they have plans of having a family in the United States. *Statement from Applicant's Wife*, submitted on October 31, 2001. The applicant's wife indicated that the applicant's departure would cause her great stress, as she would have

concern for the applicant's survival in Mexico. *Id.* She provided that she will experience psychological and emotional hardship if the applicant is compelled to depart the United States. *Id.* She stated that she and the applicant are living at her parents' home in order to care for them and provide financial support. *Statement from Applicant's Wife*, dated May 3, 2003. The applicant's wife expressed that, if the applicant's waiver application is denied, she would like to depart with him, yet her parents require assistance and she could not leave them. *Id.* The applicant's wife stated that she is completing an associate's degree, and she would not be able to continue without the applicant's support. *Id.* She provided that she and the applicant have an opportunity to start a real estate investment business, yet they would be unable to pursue it if the applicant departs. *Id.* at 1-2. She provided that she is an assistant manager with a future with her current employer, and that she does not anticipate having employment opportunities in Mexico. *Id.* at 2.

The applicant's mother provided that the applicant helps her and the applicant's father with chores they are unable to perform. *Statement from Applicant's Mother*, dated May 2, 2003. She stated that she has back problems and the applicant's father has high blood pressure, so the applicant takes them to the doctor when needed. *Id.* She provided that neither she or the applicant's father work, and she believes the applicant pays for approximately 50 percent of their expenses. *Id.* She explained that the applicant is her only son, and she would suffer emotional hardship if she is deprived of the applicant's companionship. *Id.* at 2. The applicant's mother further expressed that she would suffer emotional hardship due to the applicant losing the opportunities he has in the United States. *Id.*

On appeal, counsel contends that the applicant and his wife have had a daughter since the applicant filed his Form I-601 application. *Brief in Support of Appeal*, submitted October 18, 2004. Counsel contends that, should the applicant's waiver request be denied, his wife would endure greater hardship due to the fact that she would have to care for a young child alone. *Id.*

Counsel references the decision of the Board of Immigration Appeals (BIA) in *Matter of Kao & Lin* regarding suspension of deportation matter. *Id.* at 4; *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001). Counsel notes that the BIA found that a child would experience extreme hardship where she had resided in the United States for her entire life and she faced relocation to a country where she did not speak the local language. Counsel asserts that the same circumstances apply to the applicant's wife, and thus she would experience extreme hardship if compelled to relocate to Mexico. *Brief in Support of Appeal* at 4-5.

Counsel contends that the district director failed to give adequate consideration to the effect that the applicant's departure would have on the applicant's parents. *Id.* at 5. Counsel reiterates that the applicant's parents rely on him for economic support, and that they are unable to work due to their health conditions. *Id.* Counsel cites the decision of the BIA in *Matter of Louie* to stand for the proposition that, where ill health or disabilities are a factor of not being able to work, sufficient economic hardship amounting to extreme hardship can be found. *Id.*; *Matter of Louie*, 10 I&N Dec. 223 (BIA 1963).

Counsel asserts that the district director failed to consider all elements of hardship to the applicant's relatives in aggregate. *Id.* at 6.

Upon review, the applicant has failed to show that a qualifying relative will suffer extreme hardship should he be prohibited from remaining in the United States. The record contains references to the applicant's wife's

parents, including an explanation that the applicant lives with them and offers them assistance due to their health problems. Counsel further notes that the applicant and his wife now have a U.S. citizen daughter. The applicant explained that he has no contacts or relatives in Mexico. Thus, the evidence of record suggests that the applicant, as well as his mother-in-law, father-in-law, and child will endure hardship if the applicant departs the United States. However, hardship to the applicant, the applicant's child, or his wife's parents is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant, the applicant's daughter, and the applicant's wife's parents will bear significant consequences if the applicant's waiver application is denied, only hardship to the applicant's wife and parents may be properly considered in this section 212(i) waiver proceeding.

The applicant's wife explained that she would be compelled to care for her parents alone in the applicant's absence. However, the applicant has not provided independent evidence to show that he and his wife reside with her parents, or that they provide them with financial assistance. Such evidence could include documentation bearing the applicant's and wife's parents address to reflect whether it is the same, as well as documentation of expenses covered by the applicant and his wife. While the record shows that the applicant's mother-in-law is receiving treatment for bipolar disorder and depression, the AAO lacks sufficient evidence to assess the impact the applicant's mother-in-law's condition would have on the applicant's wife should the applicant depart the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As noted above, direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, as is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, the hardship due to caring for the child must be considered. Yet, while the AAO appreciates the challenge of raising a child with one parent absent, such situations are common and anticipated results of exclusion and deportation. The applicant has not established that his wife would experience challenges due to caring for their child that go beyond those typically expected.

The applicant's wife and parents have expressed that they will suffer emotional consequences if they are separated from the applicant. However, the record does not support that they will experience consequences that go beyond those ordinarily expected of the family members of those deemed inadmissible. U.S. court decisions have 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*, 21 I&N Dec. 627 (BIA 1996), 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.

The applicant's wife described economic hardships she may endure if the applicant is compelled to depart the United States. Specifically, she provided that she would not be able to continue her higher education, and she

and the applicant would be forced to forego a business opportunity. However, the applicant has not submitted evidence to show that his wife is current enrolled in a school, or to reflect what education expenses his wife current has or plans to incur. Further, the applicant has not explained the business opportunity referenced by his wife, or submitted documentation to allow the AAO to assess the economic impact of failing to pursue it. Nor has the applicant provided a clear account of his household's expenses or income, such that the AAO can determine his wife's economic needs. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The applicant has not shown that his wife will experience financial consequences that rise to the level of extreme hardship.

The applicant's mother explained that the applicant provides economic support for her and the applicant's father, totaling approximately 50 percent of their regular expenses. However, the applicant has not submitted evidence of his parents' expenses, or documentation to show that he provides financial assistance for them. While the record reflects that the applicant's father draws a retirement, the applicant has not indicated the amount of his parents' independent resources or monthly income. While counsel asserts that the applicant's parents do not work due to their illness, the record does not contain documentation of a health professional to support such a contention. Further, while the applicant's mother indicated that the applicant is her only son, she did not state whether she has daughters or other relatives in the United States on whom she could call for assistance if desired. Counsel contends that the district director failed to give adequate consideration to the effect that the applicant's departure would have on the applicant's parents. Yet, as noted herein, the record lacks adequate evidence to fully consider such consequences. Thus, the applicant has not shown that his parents in fact rely on his financial support, such that they will experience significant hardship if he departs the United States.

The applicant's wife and parents may join the applicant in Mexico if they choose. As natives of Mexico, they would not be faced with the challenges of adapted to an unfamiliar language or culture. The applicant's wife expressed concern regarding the limited employment opportunities in Mexico, yet the applicant has not established that they would be unable to meet their expenses should they relocate there. However, as citizens and a permanent resident of the United States, the applicant's wife and parents are not required to reside outside the country due to the applicant's inadmissibility.

Counsel notes that, in *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA found that a child would experience extreme hardship where she had resided in the United States for her entire life and she faced relocation to a country where she did not speak the local language. Counsel asserts that the same circumstances apply to the applicant's wife, and thus she would experience extreme hardship if compelled to relocate to Mexico. *Brief in Support of Appeal* at 4-5. However, the child in question in *Matter of Kao & Lin* faced the possible deportation of both parents, rendering it likely that she would be compelled to depart with them. In the present matter, the applicant's wife is a working adult with means to support herself in the United States. Thus, the present circumstances do not compel the applicant's wife to relocate to Mexico if the applicant's waiver application is denied. In essence, the applicant's wife has a choice of whether to join the applicant abroad, whereas the child in *Matter of Kao & Lin* did not.

All instances of hardship to the applicant's wife and parents have been considered in aggregate. Yet, based on the limited evidence in the record, the applicant has not shown that the instances of hardship that will be

experienced by his wife and parents, should the applicant be prohibited from remaining in the United States, rise to the level of extreme hardship. 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.