

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

PUBLIC COPY

[REDACTED]

H2

FILE:

Office: CHICAGO, IL

Date:

**JUN 02 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:

[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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Chicago, Illinois. The matter 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 determined 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 falsely claimed to be a United States citizen on or about March 22, 1994. The applicant is the spouse of a naturalized citizen of the United States and 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 spouse and children.

The interim 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 Interim District Director*, dated February 13, 2004.

On appeal, counsel contends that the decision of the interim district director quotes the standard established in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), but fails to follow the reasoning of the case; confuses hardship to the applicant with hardship to the applicant's spouse and reflects a blanket policy of Citizenship and Immigration Services (CIS) to deny waiver applications. *Form I-290B*, dated March 12, 2004. In support of these assertions, counsel submits a brief, copies of tax documents of the applicant and her spouse; a copy of a monthly mortgage statement for the applicant and her spouse; a medical report for the mother of the applicant's spouse and copies of immigration and identity documents for members of the family of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

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:

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 record reflects that on or about March 22, 1994, the applicant claimed to be a citizen of the United States to immigration officials in an attempt to procure admission into the United States.

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. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provisions afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver, but do not additionally afford them consideration of their waiver application under the standard applied before September 30, 1996.

In considering a case where a false claim to U.S. citizenship has been made, Service [Citizenship and Immigration Services] 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.*

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself 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 contends that the applicant's spouse would suffer extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel states that the applicant and her spouse have three United States citizen children as well as several extended family members residing in the United States. *Id.* at 6-7. Counsel indicates that the applicant and her spouse own property in the United States. *Id.* Counsel makes no assertions regarding 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.

Moreover, the record fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in order to maintain proximity to extended family members and residence in his adoptive country. Counsel indicates that the applicant provides care to the couple's children when her spouse works overtime and that when both parents are at work, alternative child care is retained. *Id.* at 1. The record fails to establish that alternative child care cannot be retained in the absence of the applicant when the applicant's spouse works overtime. Counsel indicates that the mother of the applicant's spouse cannot provide care to the children owing to the fact that she suffers from Bell's Palsy. *Id.* Although the AAO is not suggesting that the mother of the applicant's spouse should be the individual who provides care to her grandchildren, the record fails to establish how the symptoms of Bell's Palsy prevent the mother of the applicant's spouse from caring for the children. *See Victory Memorial Hospital Bell's Palsy Handout* (stating that the condition involves paralysis of one side of the face and may involve drooping of the eye and/or mouth). The mother of the applicant's spouse apparently also suffers after effects of a stroke which may inhibit her ability to care for her grandchildren, however the record fails to offer a cogent argument leading to this conclusion and this information does not constitute probative evidence regarding whether the current primary child care provider (listed by counsel as costing \$300 per week) can provide additional care when necessary.

The AAO acknowledges the assertions of the applicant's spouse indicating that he loves the applicant and that they have worked hard to establish themselves in the United States. *Letter from [REDACTED]*, undated. However, 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*, 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. 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 a certain amount of hardship as a result of

relocation or due to separation from the applicant. However, his situation, based on the record, is typical to individuals uprooted or separated as a result of 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 she 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.