



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: MAY 16 2006

IN RE:

[Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL 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 (U.S.) under 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 into the United States by fraud or willful misrepresentation in March 1994. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with his spouse and children.

The district director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, but was not eligible for a waiver of inadmissibility because he fraudulently represented himself as a U.S. citizen. The director also found that the applicant had not established extreme hardship would be imposed on a qualifying relative as a result of the applicant's inadmissibility. The application was denied accordingly. *District Director Decision*, dated October 27, 2003.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because his false citizenship claim was before September 30, 1996 and that the director failed to balance the equities and adverse factors in making a discretionary decision. *Counsel's Appeal's Brief*, undated.

The record in this case includes, but is not limited to: a statement from the applicant's spouse, the birth certificate of the applicant's son and a financial aid transcript for the applicant's spouse from Waubensee Community College. The entire record was considered in adjudication of this case.

The record indicates that in March 1994 the applicant presented a fraudulent U.S. birth certificate to a Department of State official in an attempt to obtain a U.S. passport. 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 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.

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. Therefore, counsel erred in his assertion that the applicant is admissible because his false citizenship claim occurred before September 30, 1996. If the applicant in this case had made his false citizenship claim on or after September 30, 1996 he would be inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and no waiver would be available to him. Because his false citizenship

claim was made before September 30, 1996 he is still inadmissible, but for misrepresentation under section 212(a)(6)(C)(i) of the Act, not for a false citizenship claim under section 212(a)(6)(C)(ii)(I) of the Act. Because there is a waiver of inadmissibility for applicants found inadmissible under section 212(a)(6)(C)(i) of the Act, the applicant in this case is eligible to apply for this waiver under section 212(i) of the Act. .

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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien himself experiences or the alien's children experience due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. The applicant's spouse asserts that she would suffer extreme hardship as a result of moving to Mexico to reside with the applicant. She states that her entire family is in the United States, she does not speak Spanish very well, they would lose their family home which is provided by the applicant's employer, and the applicant would not be able to support their family in Mexico as it would be unlikely that he could find employment. The AAO notes that no country reports regarding the economic and employment situation in Mexico were submitted. No documentation was submitted to support the claim that they would not be able to purchase a new home in Mexico. The applicant must submit documentation to support his claims. In the current application he has not done so, therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse asserts that she provides childcare for their children while the applicant works to support the family. She also states that she is attending community college, which her husband pays for and that she would not be able to maintain this lifestyle if the applicant were removed from the United States. Again, the applicant submitted no documentation concerning the specifics of the adverse effects that his removal would have on the spouse's financial situation nor does he show that other family members in the United States are unable to help with this situation or that his spouse is incapable of altering her lifestyle and finding employment to support her family. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.

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(a)(9)(B) 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.