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U.S. Citizenship  
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Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date: MAY 08 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 District Director, San Antonio, Texas, denied the application for waiver. The matter is now before the Administrative Appeals Office (AAO) in Washington DC on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He was convicted on November 2, 1992 of “theft of vehicle”. He was also convicted on May 13, 1992 of “theft of stolen property”. He was ordered deported by an immigration judge on December 21, 1994 for violation of then Sections 241(a)(1)(B) and 241(a)(2)(A)(ii) of the Immigration and Nationality Act. Note that former section 241 of the Act was redesignated section 237 by section 305(a)(2) of IIRIRA. Those sections refer to the applicant being unlawfully present in the United States and being convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. He was deported at Laredo, Texas on January 12, 1995.

The applicant was also convicted on August 1, 1995, in the United States District Court, Southern District of Texas, of “attempting to enter the United States by a willfully false or misleading representation or willful concealment of a material fact, in violation of Title 8, United States Code, Section 1325(a)(3). He was ordered deported by an immigration judge on November 2, 1995 for having been arrested, deported and having reentered the United States without obtaining the Attorney General’s consent to reapply for admission.

The applicant is seeking a waiver of inadmissibility on Form I-601 and permission to reapply for admission into the United States after deportation or removal on Form I-212 so that he may reside in the United States with his U.S citizen father, sister and brother and lawful permanent resident mother.

The district director denied both applications, basing her denial of Form I-601 on her denial of Form I-212 and, without explanation, finding that the record did not warrant a favorable exercise of discretion. *Decision of Director on Form I-601*, August 7, 2003; *Decision of Director on Form I-212*, August 7, 2003.

On appeal counsel for the applicant contends that the offenses for which the applicant was convicted were not aggravated felonies, the applicant was removed before IIRIRA was enacted and the applicant has been in Mexico for at least eight years.

The record indicates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. He is also inadmissible under INA § 212(a)(2)(B), 8 U.S.C. § 1182(a)(2)(B) for having been convicted of 2 or more offenses...for which the aggregate sentences to confinement were 5 years or more. He is also inadmissible for violation of INA § 212(a)(9)(A)(ii) as an alien seeking admission within 20 years of the date of his second removal. To gain admission to the United States, the applicant would need to be granted a waiver of both INA § 212(a)(6)(C)(i) (under INA § 212(i)) and INA § 212(a)(2)(B) (under INA § 212(h)) as well as permission to reapply for admission to the United States. If the applicant establishes eligibility for a waiver under INA § 212(i), in doing so he would also establish that he meets the eligibility requirements for a waiver under INA § 212(h), and also would show that he merits a favorable exercise of discretion as is required to gain permission to reapply for admission after deportation or

removal on Form I-212. Therefore, the AAO will consider the merits of his application for waiver under INA § 212(i) filed on Form I-601.

The entire record has been reviewed and considered in making this decision.

Section 212(a)(6)(C) of the Act, 8 U.S.C § 1182(a)(6)(C) 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.

The record indicates that the applicant was convicted on August 1, 1995, in the United States District Court, Southern District of Texas, of “attempting to enter the United States by a willfully false or misleading representation or willful concealment of a material fact. He is therefore inadmissible under INA § 212(a)(6)(C), which makes such conduct inadmissible regardless of when it occurred. Also, in *Matter of Cervantes*, 22 I&N Dec. 560, 563-65 (BIA 1999), the Board of Immigration Appeals (Board) held:

[T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General’s, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.

[W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

Based on the above holding, current section 212(i) applies to the instant case.

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [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, either a spouse or parent. If extreme hardship is established, it is but one favorable factor to be considered in the determination of how the Secretary should exercise his discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen father and lawful permanent resident mother, as there is no indication that he has a qualifying spouse.

In *Cervantes-Gonzalez*, the Board outlined the following factors deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Cervantes-Gonzalez* at 565-566. (Citations omitted).

The record reflects that the applicant's two parents are qualifying relatives. However, the record contains no evidence indicating the effect that his inadmissibility would have on either of his parents. As a result, the applicant has not established that his inadmissibility would cause extreme hardship to a qualifying relative, as is required to establish eligibility for a waiver under INA § 212(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Also, no purpose would be served in evaluating his eligibility for a waiver under INA § 212(h) or permission to reapply for admission on Form I-212.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility is entirely on the applicant. 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.