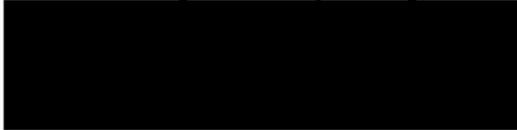




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:



Office: CHICAGO, IL

Date: JAN 09 2007

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:



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, Chicago, Illinois 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 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 entry into the United States by fraud or willful misrepresentation. 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), in order to reside in the United States with his U.S. citizen spouse and three U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated January 24, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law by finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from [REDACTED], attorney, dated August 11, 2002; a letter from [REDACTED] M.D., dated August 2, 2002; a letter from [REDACTED], M.D., Neurology, Resurrection Health Care, dated August 5, 2002; letters of support for the applicant; and tax statements for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

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.
- (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 (including section 274A) or any other Federal or State law 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.

The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver. *Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The record reflects that the applicant admitted in his adjustment of status interview to presenting a false U.S. birth certificate in 1988 to immigration inspectors in an attempt to cross the U.S.-Mexico border. The applicant is eligible for a waiver of this misrepresentation because the incident occurred prior to September 30, 1996.

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. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. Prior to naturalizing, the applicant's spouse was a citizen of Mexico. *See naturalization certificate of the applicant's spouse*. The AAO notes that if the applicant's spouse resided in Mexico, she would be returning to her native country. The record fails to mention what family ties the applicant's spouse may still have in Mexico. Counsel asserts that the applicant's spouse is allergic to a variety of foreign substances. *Attorney's brief*. A physician's letter dated August 2, 2002 states that the applicant's spouse and two of her children are taking allergy shots now and in the future. *Letter*, [REDACTED]

██████████ M.D., dated August 2, 2002. While the AAO acknowledges the applicant's spouse's allergy problems, it notes that her condition is non-life threatening and that there is nothing in the record to demonstrate that the applicant's spouse would be unable to receive the appropriate medical care in Mexico. The applicant's spouse's father has dementia seizure disorder and a brain tumor. Letter ██████████ M.D., Neurology, Resurrection Health Care, dated August 5, 2002. According to his physician, he needs constant supervision and attention by the applicant's spouse. *Id.* Counsel states that the care of the applicant's spouse's father taxes the time of all other family members, including the applicant's spouse. *Attorney's brief.* While the record does not elaborate, the AAO observes that the care of the applicant's spouse's father does not fall entirely upon the applicant's spouse. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is unemployed. *Attorney's brief.* The applicant's spouse is financially and emotionally dependent upon the applicant. Letter ██████████ attorney, dated August 11, 2002. While the AAO acknowledges the financial situation of the applicant and his family, the AAO does not find that the record demonstrates that the applicant would be unable to sustain himself and contribute to his family's financial well-being in Mexico. Additionally, there is nothing in the record to demonstrate that the applicant's spouse is unable to work. Counsel indicated in his brief that her allergies prevented her from working, but the note from her doctor did not note any inability to work due to allergies. 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. 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 removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

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(a)(6)(C) 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.