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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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HL2



FILE:



Office: CIUDAD JUAREZ, MEXICO
[consolidated therein]

Date: **APR 22 2008**

IN RE:

Applicant:



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:

SELF-REPRESENTED

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, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting a Form DSP-150 (border crossing card) in someone else's name. The record indicates that the applicant is the son of a United States citizen and a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen father, lawful permanent resident mother, and United States citizen and lawful permanent resident siblings.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated December 3, 2007.

On appeal, the applicant claims that his "parents have been devastated. [He is] the only son that [has] not been able to join them in the United States. [His] parents are psychologically devastated.... They are suffering extreme physical and psychological hardship." *Form I-290B*, filed December 27, 2007.

The record includes, but is not limited to, a statement from the applicant, a statement from the applicant's parents, and psychological evaluations on the applicant's parents by [REDACTED], MFT. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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 indicates that the applicant is a native and citizen of Mexico who attempted to enter the United States on February 9, 2002, by presenting a Form DSP-150 in someone else's name. The applicant was expeditiously removed on the same day. On March 21, 2002, the applicant's father, [REDACTED] a lawful permanent resident of the United States, filed a Form I-130 on behalf of the applicant. On October 20, 2004, the applicant's father became a United States citizen. On February 6, 2005, the applicant's Form I-130 was approved. On March 26, 2007, the applicant filed a Form I-601. On December 3, 2007, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen father and lawful permanent resident mother. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant claims that his parents have suffered extreme hardship since he was removed from the United States. *Form I-290B, supra*. The applicant's parents state the applicant "is the only [child] remaining in Mexico." *Letter from [REDACTED] and [REDACTED] undated*. The applicant states his parents are "under constant psychological pressure. They are currently undergoing medical treatment due to [his] current situation.... [His] parents have been suffering and have been in medical treatment.... They are physically and emotionally torn apart. They are ill and are not able to function on their own." *Form I-290B, supra*. The applicant's parents state that the applicant's removal from the United States "has caused [them] extreme psychological as well as [emotional] hardship. Without his help and support [they] would not be able to live a normal life.... Without [the applicant's presence] [they] would not be able to cope and function in society. [The applicant] has provided moral as well as loving support." *Letter from [REDACTED] and [REDACTED] supra*. Ms. [REDACTED] diagnosed the applicant's mother and father with Major Depressive Disorder and Generalized Anxiety Disorder. *See Psychological Report on [REDACTED] from [REDACTED] MFT*, dated February 28, 2007;

see also Psychological Report on [REDACTED] from [REDACTED] MFT, dated February 28, 2007. Ms. [REDACTED] claims the applicant's parents "should be allowed to live the remaining years of [their lives] with [their] son in this country and be reunited with [their] family to prevent further decompensation" of the applicant's mother and father. Id. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's parents and a therapist. There was no evidence submitted establishing an ongoing relationship between the therapist and the applicant's parents. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's father states he and his wife "have been under medical treatment.... [His] job performance [sic] has deteriorated [sic] and [he] may [lose his] job due to [his] current health." Letter from [REDACTED] dated December 20, 2007. The AAO notes that there was no documentation submitted establishing that the applicant's parents could not receive treatment for their medical conditions in Mexico, and there is no indication that the applicant's parents have to remain in the United States to receive their medical treatments. The AAO notes that the applicant's father is currently working, and it has not been established that he lacks transferable skills that would aid him in obtaining a job in Mexico. Additionally, the applicant's parents are natives of Mexico, who spent the majority of their formative years in Mexico, they speak Spanish, and it has not been established that the applicant and his parents have no family ties in Mexico. The AAO finds that the applicant has failed to establish extreme hardship to his United States citizen father and lawful permanent resident mother if they accompany the applicant to Mexico.

In addition, the applicant does not establish extreme hardship to his parents if they remain in the United States, maintaining their employment and access to medical care. As a United States citizen and lawful permanent resident, the applicant's parents are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's siblings reside in the United States and there was no evidence provided establishing that the applicant's siblings could not help support their parents. Additionally, the AAO notes that there was no evidence submitted establishing that the applicant provides any support to his parents and the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his parents if they remain in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 United States citizen father and lawful permanent resident mother have endured hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal 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 parents 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 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)(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.