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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CHICAGO, ILLINOIS

Date: **DEC 15 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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility, which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated March 29, 2005.*

The AAO will first address the finding of inadmissibility.

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 chapter 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 chapter . . . is inadmissible.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 . . .

On appeal counsel asserts that the applicant is not inadmissible for falsely claiming U.S. citizenship because he made his false claim to U.S. citizenship in 1995, and falsely claiming U.S. citizenship for any purpose or benefit did not become a ground of inadmissibility until passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a 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 (IIRIRA) 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.*

In a sworn statement taken in relation to his application for adjustment to permanent residence status, the applicant stated that in 1994 or 1995 he entered the United States through Laredo Texas by presenting a false United States birth certificate indicating he was born in Texas.

The decision of the acting district director was correct in finding the applicant inadmissible under section 212(a)(6)(B)(i) of the Act and eligible for a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to the applicant and to his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. If extreme hardship is

established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s qualifying relative must be established if she or he joins the applicant, and alternatively, if she or he remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In the appeal brief, counsel states that the district director’s decision is erroneous as a matter of fact and law, and that the positive and negative factors were not weighed. Counsel states that the applicant has resided in the United States since 1995 and that he and his U.S. citizen spouse have three children, who are 18, 21, and 24 years old. Counsel indicates that one of the applicant’s three children is a lawful permanent resident of the United States. Counsel relies on *Opaka v. INS*, 93 F.3d 392 (7<sup>th</sup> Cir. 1996), in claiming that failure to consider extreme hardship as it relates to the applicant’s children is erroneous. Positive factors, such as the owning of a house, must be determined in assessing hardship, counsel states. According to counsel, the applicant’s wife knows of no other life than here, and that their three children have been raised in the United States for the majority of their lives and would not know how to adjust to life in Mexico. Counsel states that the applicant is the financial provider for his family here as well as his extended family in Mexico. Counsel states that the factors listed in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), are relevant here. Counsel alleges that there is a great risk that relocation to Mexico, where there are poor living conditions, will adversely affect the applicant’s family because it is unlikely that he will get a job in Mexico or earn his present income, which provides for his wife and children in the United States. Counsel states that the applicant grew up poor in Mexico and was not able to finish

school and was married to his wife when he was 21 years old, and she was 14 years old. He states that prior to their move to the United States they could not sustain themselves in Mexico with regard to housing, health care, education, or employment. Counsel indicates that while in the United States the applicant and his wife have paid taxes and have never received any public assistance.

In addition to other documentation, the record contains the following evidence submitted in support of the waiver application:

- A letter dated February 26, 2002, by the president of [REDACTED] Landscape Contractors, Inc., confirming the applicant's full-time employment, his hourly wage of \$11.50, and his employment since June 2001.
  - A letter dated April 3, 2001, by the human resource administrator with Custom Aluminum Products, Inc., confirming the applicant's employment since September 8, 1993, his present job as pickup driver, and his hourly rate of \$9.39.
  - Wage statements
  - Income tax returns for 2000 and 1999
  - A resident alien card for [REDACTED]
- An affidavit by the applicant's wife wherein she states that she has four U.S. citizen sisters living in Texas, she has three children who live with her and one grandson, she has no family in Mexico, and that she does not know what she would do without her husband. She states that she works as an order filler and her husband is a landscaper. She states that she cannot join her husband in Mexico because her children would not go there. She states that their life is in the United States and they need the applicant with them as the provider of financial and emotional support. She states that she knows that her husband would not find employment in Mexico because they lived there before and he could not sustain them with the wages he some times was able to earn.
- A letter dated September 8, 2005, by Partyline's human resource clerk, stating that the applicant's wife has been employed there since January 2002, and is a full-time material handler, earning \$11.25 per hour.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Family separation is important in determining hardship. Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has children born in the United States or who are U.S. lawful permanent residents is not sufficient, in itself, to establish extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA

1984). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as did the court in *Lee v. INS*, 550 F.2d 554 (9<sup>th</sup> Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9<sup>th</sup> Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9<sup>th</sup> Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record conveys that the applicant's wife is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, 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 as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which she will experience, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

Although the applicant's wife states that she relies on her husband for financial support, the record shows that she is employed full time earning \$11.25 per hour. No documentation of the expenses of the applicant's wife has been presented to establish that her income is insufficient to support herself. No documentation is shown to indicate that she is required to support her adult children. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Although the applicant's wife and counsel indicate that the applicant will not find employment in Mexico, the record contains no documentation in support of their claim. Going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. No documentation shows that the applicant's wife is of an advanced age or has a severe illness.

The applicant's wife has spent most of her life in the United States and adjustment to life in Mexico will be difficult for her, especially if her adult children do not accompany. Nevertheless, the AAO finds that the applicant's wife's adjustment to life in Mexico will be mitigated by his presence and that of his family members.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met to establish extreme hardship to the applicant's wife in the event that she were to remain in the United States without him, and alternatively, if she were to join the applicant to live in Mexico. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.