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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H₂

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER
[Redacted]
consolidated therein]

Date:

JUL 08 2008

IN RE:

Applicant:

[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 Director, California Service Center, and the matter 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 section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for presenting a counterfeit ADIT stamp. The record indicates that the applicant is married to a naturalized United States citizen 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 wife, three United States citizen sons, and three United States citizen stepdaughters.

The Director found that the applicant failed to establish that extreme hardship would be imposed on his wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated May 9, 2007.

On appeal, the applicant, through counsel, states “[the applicant’s] removal will constitute extreme hardship to [his] United States Citizen wife.” *Form I-290B*, filed May 31, 2007.

The record includes, but is not limited to, counsel’s brief, declarations from the applicant and his wife, the applicant’s marriage certificate, and various bills. 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...

Counsel contends that the hardship to the applicant's United States citizen children and stepchildren should be considered. *See Appeal Brief*, page 6, filed June 28, 2007. Counsel relies on *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), where the Board of Immigration Appeals (Board) determined that extreme hardship to a United States citizen child must be given careful consideration when evaluating an application for suspension of deportation. *See Matter of Kao and Lin*, 23 I&N Dec. 45, 50-51 (BIA 2001). The AAO notes that the applicant did not file an Application for Suspension of Deportation, which considers hardship to children. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children and stepchildren will not be considered, except as it may cause hardship to the applicant's spouse.

The applicant's Petition for Alien Relative (Form I-130) reflects that the applicant initially entered the United States without inspection in 1992. On January 27, 2000, the applicant attempted to enter the United States by presenting a Mexican passport with a fraudulent ADIT stamp. On January 28, 2000, the applicant was expeditiously removed from the United States. In response to a Request for Evidence, the applicant states he reentered the United States without inspection on January 30, 2000. On April 25, 2001, the applicant's wife, a lawful permanent resident of the United States at the time, filed a Form I-130 on behalf of the applicant. On January 30, 2004, the applicant's wife became a United States citizen. On October 3, 2005, the applicant's Form I-130 was approved. On May 22, 2006, the applicant filed a Form I-601 and an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 16, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On May 9, 2007, the Director denied the applicant's Form I-212, Form I-485, and 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 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) 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.

Counsel contends that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B, supra*. Counsel states that the applicant's wife "would be forced to make a painful choice between two undesirable alternatives; to remain in the United States unaided by her husband as a single mother to six (6) U.S. born children, or to accompany her husband to Mexico, leaving her children behind and destroying the family." *Appeal Brief, supra* at 7. The AAO notes that the applicant's wife is a native of Mexico, she speaks Spanish, and it has not been established that the applicant has no family ties in Mexico. The applicant's wife states she would have a difficult time finding a job in Mexico. *See Declaration from [REDACTED]*, dated June 19, 2007. The AAO notes that the applicant has not established that his wife has no transferable skills that would aid her in obtaining a job in Mexico. Additionally, the AAO notes that only four of the applicant's children are minors, and it has not been established that they would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. Furthermore, the applicant's children "speak some Spanish." *Id.* The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her employment and access to education for their children. Counsel states that the applicant's wife "could not accompany her husband to Mexico with her entire family of six (6) children, all of which are U.S. Citizens, and deprive them of the future of being raised and going to school in their native United States." *Appeal Brief, supra* at 7. The AAO notes that as a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims that if the applicant is removed from the United States and the applicant's wife stays in the United States, "she will have to quit her job to take care of her children (now, [the applicant] takes them to school and picks them up) while [the applicant's wife] works, [the applicant's wife] will have to go on Welfare and move a [sic] much smaller apartment or even rent a room to live in it [sic] with her six children. She will not be able to afford a house payment with any Welfare coupons she may get." *Id.* at 5. The AAO notes that the record establishes that the applicant and his wife have incurred various financial responsibilities; however, 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. Further, 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 notes that two of the applicant's children are adults, and it has not been established that they cannot help their mother with caring for their siblings or help contribute to the household. Additionally, the AAO notes that the applicant's mother-in-law resides with them in the United States, and it has not been established that she cannot help her daughter with caring for the children and the house. *See Appeal Brief, supra* at 7. The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

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 Board 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 wife 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.

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 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.