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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES (SAN BERNARDINO) Date: APR 2 8 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 and the beneficiary of an approved Form I-140 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the father of three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his children.

The district director found that the applicant had failed to establish eligibility for waiver in that he failed to show the requisite relationship to a U.S. citizen or lawful permanent resident (LPR) spouse or parent as required in the statute authorizing waiver. The district director therefore denied the application. On appeal counsel contended that waiver is available to the applicant pursuant to section 237(a)(1)(H) of the Act. Counsel also asserted that failure to grant waiver in this case would occasion extreme hardship to the applicant's family.

Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

The applicant's criminal history, obtained from the FBI Criminal Justice Information Services Division and accessed using the applicant's fingerprints, shows that on January 1, 1992, the applicant was arrested or detained, under the name [redacted], at the Los Angeles offices of the U.S. Department of State, for "FLS STATEMENTS APPLICATION & USE OF A, ETC." In a declaration that the applicant signed during October 2003, the applicant stated, "I attempted to obtain a U.S. passport by using a birth certificate which did not belong to me.

That admission, supported by the applicant's criminal history, is sufficient to show that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

For the applicant's inadmissibility to be waived pursuant to section 212(i)(1) of the Act, he must demonstrate, first, that he qualifies for waiver pursuant to section 212(i)(1) of the Act, and, second, that waiver should, as a matter of discretion, be granted.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or LPR spouse or parent of the applicant. Hardship to the applicant or his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The record in the instant case contains no evidence that the applicant has a U.S. citizen or LPR spouse or parent. As such, the applicant has not demonstrated that he is eligible for waiver pursuant to section 212(i)(1) of the Act.

On appeal, counsel asserted that the applicant is eligible for waiver pursuant to section 237(a)(1)(H) of the Act. Counsel noted that, under that section, an applicant's children are qualifying relatives.

Section 237(a)(1)(H) of the Act applies to deportability in removal proceedings. It is not applicable to admissibility for purposes of adjustment of status or issuance of an immigrant visa. It does not accord any possibility of waiver of inadmissibility in the applicant's situation.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen or LPR spouse or parent as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible for waiver, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.