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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: MEXICO CITY Date: FEB 05 2009
(CIUDAD JUAREZ)

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:

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.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Mexico City, Mexico, 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. The record indicates that on two separate occasions, in September 1998 and in December 1999, the applicant attempted to enter the United States by presenting fraudulent documents. The applicant was thus 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 admission to the United States by fraud or willful misrepresentation.¹ 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 U.S. citizen spouse and children, born in 1998 and 2004.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated March 22, 2006.

In support of the appeal, the applicant's U.S. citizen spouse submitted a letter, dated April 20, 2006, and financial documentation. 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.

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 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....

¹ The applicant does not contest the officer in charge's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

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 set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Section 212(a)(6)(C)(i) 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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant’s spouse, a U.S. citizen, is the only qualifying relative and hardship to the applicant and/or their U.S. citizen children cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s U.S. citizen spouse contends that she will suffer emotional and financial hardship if the applicant’s waiver request is not granted. As the applicant’s spouse states:

If you see, the income I have in the United States is not enough to support a family of 3 people. My total income in the United States is about 7,000 per year....

I receive the rest from my husband [the applicant] from his Mexican job (if he could obtain or change his job into the United State, he could easily make more income than he is currently obtaining in Mexico) and some other family member that help us, while he is trying to get his waiver, but we can’t keep this way of living for the rest of our lives.

Actually, I am behind payments as you may see in the receipt I am enclosing....

I have to work 40+ hours per week in the agricultural fields in order to try to support my children, I arrive to my home at 7 PM tired, because the work that I only can get is hard work because, I don't have a colleague [sic] degree. I can't study because I have to work in order to get pay and I can take care of my children, besides all the problems, I had explained before, my children will suffer the worse—they will grow up with [sic] a father and a mother, because I work all day and the father can't cross the border....

Letter from [REDACTED] dated April 20, 2006.

Based on the documentation provided, it has been established that the applicant's spouse is suffering extreme emotional and financial hardship due to the applicant's inadmissibility. The applicant's spouse is raising young children while working long hours to try to maintain the household. Documentation has been provided to establish that with her income, the applicant's spouse does not make enough money to pay the requisite bills. Were the applicant able to reside in the United States, he would be able to assist his spouse and children, by obtaining gainful employment and/or by being physically present to care for the children on a day to day basis. The applicant's spouse faces hardship beyond that normally expected of one facing the inadmissibility of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse references the following hardships were she to relocate abroad with the applicant due to his inadmissibility:

If he [the applicant] is not allowed to enter to the United States, he will have to be living by him self, because all the family member of him, are living in the United States, my children and I live in the United States, and is impossible for us to leave everything and go to Mexico with him, because my children needs to continue their education in the United States and they lack of the Spanish language....

Letter from [REDACTED], dated November 28, 2005.

No corroborating evidence has been provided to establish that a relocation abroad would cause the applicant's spouse extreme hardship. In addition, it has not been established that such a relocation would cause hardship to the children in terms of their academics, thereby causing the applicant's spouse, the only qualifying relative in this case, extreme hardship. Finally, no documentation has been provided to establish that the applicant and/or his spouse would be unable to obtain gainful employment in Mexico that would ensure financial viability and security. 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)).

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resided abroad, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were to relocate abroad to reside with the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.