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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

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FILE:

Office: PHOENIX, AZ

Date:

JUL 07 2009

IN RE:

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona 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 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 into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and 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 spouse and their U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 27, 2007.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding the applicant to be inadmissible. He reports that his spouse is pregnant and experiencing health problems. *Form I-290B and supplemental statement from the applicant's spouse*, submitted March 30, 2007.

In support of the waiver, the record includes, but is not limited to, an employment letter for the applicant's spouse; an offer of employment for the applicant; earnings statements and W-2 Forms for the applicant's spouse; tax statements for the applicant and his spouse; and court documents for the applicant. 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.
- (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 Act (including section 274A) or any other Federal or State law 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 alien 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 AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The record reflects that on June 19, 1994 the applicant attempted to illegally enter the United States at Calexico, California by falsely claiming to be a United States citizen. *Form I-160, Notice of Parole/Lookout Intercept*, dated June 19, 1994. He was adjudged guilty by a United States Magistrate for violating 8 U.S.C. § 1325, Attempted Illegal Entry and received an imprisonment sentence of 45 days. *Court records, Southern District of California*, dated June 20, 1994. The AAO notes that the applicant was also charged with violating 18 U.S.C. § 911, False Claim to U.S. Citizenship, but that this charge was dismissed. *Id.* Following his release, the applicant withdrew his application for admission and returned to Mexico. Subsequent to his departure, he returned to the United States on at least two occasions as a nonimmigrant visitor, most recently in 2005 or 2006. On July 23, 2007 and October 7, 2008, the applicant was granted advance paroles and departed the United States, being paroled back into the United States on August 3, 2007 and October 19, 2008. *Form I-512Ls, Authorizations for Parole of an Alien Into the United States.*

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant's spouse asserts that a waiver is unnecessary, as the charge of falsely claiming to be a United States citizen was dismissed. *Statement from the applicant's spouse*, submitted March 30, 2007. While the AAO acknowledges the applicant's assertion, it notes that a court finding is not required to determine whether the applicant violated section 212(a)(6)(C) of the Act. The record includes documents from the legacy Immigration and Naturalization Service (now USCIS) showing that the applicant falsely claimed to be a United States citizen. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 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 allow aliens in the applicant's position, i.e., those making false claims to U.S. citizenship prior to September 30, 1996, to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] 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 [USCIS] 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.

Additionally, the applicant was convicted of violating 8 U.S.C. § 1325 for knowingly and willfully attempting to enter the United States by willful false and misleading representation and willful concealment of material facts. *Court records, Southern District of California, dated June 20, 1994.* Therefore, the applicant is subject to section 212(a)(6)(C)(i) of the Act.¹

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).*

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

¹ The AAO notes that the applicant may also be inadmissible under section 212(a)(9)(B) of the Act for being unlawfully present in the United States. The record, however, does not provide sufficient information to make this determination. Even if the applicant did accrue sufficient unlawful presence to render him inadmissible to the United States, his eligibility for a waiver of inadmissibility under section 212(i) of the Act will also serve to overcome his inadmissibility under section 212(a)(9)(B) of the Act.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. While the AAO notes that the applicant states on appeal that his spouse is experiencing medical problems as a result of her pregnancy, he does not assert that these problems would result in hardship for her should she relocate to Mexico. The record also fails to indicate whether the applicant's spouse has familial and cultural ties in Mexico. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition that would require treatment in Mexico, physical or mental, and if so, whether she would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. The record does not address how the applicant's spouse would be affected if she resides in the United States without the applicant. The record includes earnings statements, W-2 Forms and tax statements for the applicant's spouse. While the AAO acknowledges these documents, it notes that the record does not show what expenses, such as utility bills, telephone bills, and mortgage or rent statements, the applicant's spouse must incur. Furthermore, the record does not show that the applicant would be unable to contribute to his family's financial well-being from Mexico. The record also does not include a statement from a licensed healthcare professional documenting how the applicant's spouse would be affected psychologically from being separated from the applicant. Although, as previously noted, the applicant states that his spouse is experiencing problems with her pregnancy, he does not indicate nor document how separation would affect his spouse's condition. The record does not address whether the applicant's spouse suffers from any other type of physical or mental health condition.

The AAO acknowledges the difficulties of being separated from one's spouse. However, U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the

United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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) 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.