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**NOV 17 2009**

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
and [Redacted] (consolidated therein)

IN RE: Applicant: [Redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for falsely claiming United States citizenship. The record indicates that the applicant is the father of a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his wife and children.

In the present application, the record indicates that the applicant initially entered the United States in 1969 without inspection. *See Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa* (Form I-130), filed April 11, 1986. On an unknown date, the applicant departed the United States. On or about February 14, 1978, the applicant attempted to enter the United States without inspection and was voluntarily returned to Mexico. On April 27, 1978, the applicant falsely claimed United States citizenship to Service officers. On May 1, 1978, an Order to Show (OSC) was issued against the applicant. On May 2, 1978, the applicant was convicted of being found in the United States after having previously entered illegally, in violation of 8 U.S.C. § 1325, and was sentenced to five (5) months in jail. On May 19, 1978, an immigration judge ordered the applicant deported from the United States. On the same day, a Warrant of Deportation (Form I-205) was issued, and on May 20, 1978, the applicant was deported from the United States.

On an unknown date, the applicant entered the United States without inspection. On October 28, 1982, an OSC was issued against the applicant. On June 1, 1983, an immigration judge granted the applicant voluntary departure, to depart the United States by November 1, 1983. The applicant failed to depart the United States as ordered, and on November 1, 1983, a Form I-205 was issued. On July 16, 1985, the applicant was deported from the United States.

On October 15, 1985, the applicant entered the United States without inspection. *See Applications to Register Permanent Residence or Adjust Status*, filed July 26, 1995 and October 8, 1997. On April 11, 1986, the applicant's naturalized United States citizen brother filed a Form I-130 on behalf of the applicant. On July 14, 1986, the applicant's Form I-130 was approved. On April 19, 1988, the applicant filed an Application for Status as a Temporary Resident (Form I-687). On June 21, 1988, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-690). On July 31, 1989, the applicant's Form I-687 was denied. On September 5, 1989, the applicant filed an appeal of his Form I-687 denial. On October 28, 1992, the Director, Legalization Appeals Unit, dismissed the applicant's appeal. On July 26, 1995, the applicant filed a Form I-485. On January 22, 1996, the Acting District Director, San Antonio District Office, denied the applicant's Form I-485. On October 8, 1997, the applicant filed a second Form I-485. On February 18, 1999, the applicant's previous removal order was

reinstated. On the same day, a Form I-205 was issued, and the applicant was removed from the United States.

On April 26, 2001, the applicant's United States citizen son filed a Form I-130 on behalf of the applicant. On July 19, 2001, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On March 1, 2002, the District Director, San Antonio District Office, denied the applicant's second Form I-485. On July 10, 2002, the applicant's Form I-130 was approved. On July 27, 2004, District Director denied the applicant's Form I-212. On February 7, 2006, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On March 13, 2007, the District Director denied the Form I-601, finding that the applicant falsely claimed to be a United States citizen and he failed to demonstrate extreme hardship to lawful permanent resident spouse.

The AAO notes that the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), until October 17, 1997, the date the applicant filed his second Application to Register Permanent Residence or Adjust Status (Form I-485). Therefore, the applicant is not inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. However, the District Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than 1 year and seeking readmission within 3 years of his last departure from the United States. The AAO notes that the District Director relied on the applicant's statement that he has not returned to the United States since his deportation on February 18, 1999, and found the applicant no longer inadmissible under 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I). However, the District Director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for falsely claiming United States citizenship, he found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative, and denied the Form I-601 accordingly. *Decision of the District Director*, dated March 13, 2007.

On appeal, the applicant, through counsel, asserts that "[i]t was error to deny the I-601 Waiver." *Form I-290B*, filed April 11, 2007.

The record includes, but is not limited to, counsel's brief, a letter from the applicant's wife, a letter from [REDACTED] regarding the applicant's wife's emotional state, and medical documents for the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

Sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) 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.

(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.

(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 [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 [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...

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien’s departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within

10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that on April 27, 1978, the applicant falsely claimed United States citizenship to Service officers.

The AAO notes that aliens making false claims to United States 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 IIRIRA afford aliens in the applicant's position, those making false claims to United States 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 [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, [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.*

As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, he is inadmissible under section 212(a)(6)(C)(i) of the Act. Additionally, the AAO notes that the applicant does not dispute that he falsely claimed United States citizenship; therefore, the AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The AAO notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. 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 spouse is the only qualifying relative,

and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

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 a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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 states that the applicant's "wife and his three U.S. citizen children have experienced and will continue to experience extreme hardship as a result of the separation from [the applicant]." *Appeal Brief*, page 6, dated May 1, 2007. Counsel states the applicant's wife "has suffered from immense disappointment that has physically manifested itself in the form of deep depression and anxiety, which further complicate her medical conditions." *Id.* at 6-7. In a letter dated April 23, 2007, [REDACTED] states the applicant's wife appears "to be under a great deal of stress." In a letter dated January 12, 2006, [REDACTED] states the applicant's wife reported that she and her children are suffering from symptoms of depression. The AAO notes that although the input of any mental health professional is respected and valuable, the submitted letters are based on two interviews between the applicant's wife and a counselor. There was no evidence submitted establishing an ongoing professional relationship between the counselor and the applicant's wife. Moreover, the conclusions reached in the submitted letters, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the counselor's findings speculative and diminishing the assessment's value to a determination of extreme hardship.

Counsel states the applicant's wife "suffers from significant medical issues.... [The applicant's wife] has a mass in her breast.... However, because of [the applicant's] absence and the resulting financial impossibilities, she has not been able to seek proper medical evaluation." *Appeal Brief, supra* at 7-8. Counsel states the applicant's wife "also suffers from hypertension and diabetes." *Id.* at 8. In a medical report dated April 10, 2000, [REDACTED] states the applicant's wife has various medical conditions, including a breast mass and situational depression. [REDACTED] states "it would be in [the applicant's wife's] best interest to have [the applicant] here to help with finances and medical f/u." The AAO notes

that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive any medical treatments. Counsel states the applicant's "children continue to suffer from serious depression and anxiety." *Appeal Brief, supra* at 7. [REDACTED] states the applicant's youngest son was "devastated" when the applicant's waiver application was denied. The AAO notes that the applicant's children are all adults and they may experience some hardship in relocating to Mexico; however, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. In a statement dated January 24, 2006, the applicant's wife states she earned "a living by cleaning homes and doing other domestic work." The AAO notes that the applicant's wife is employed in the United States, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Mexico and that there are no employment opportunities for her there. Additionally, the AAO notes that the applicant's wife is a native of Mexico, she speaks Spanish, and she spent her formative years in Mexico. It has not been established that she has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, in close proximity to her family and with access to medical care. As a lawful permanent resident of the United States, 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. The applicant's wife states she has suffered a financial hardship in being separated from the applicant; however, she states her children "are all working and are helping to support the household." Additionally, the AAO notes that 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. Moreover, 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).

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.

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.