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

U.S. Citizenship and Immigration Services

PUBLIC COPY

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 05 2009

CDJ 1995 637 470

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).

John F. Grissom,
Acting 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 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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

The applicant is the spouse of a lawful permanent resident of the United States. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to immigrate to the United States. The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated May 9, 2007.* The applicant submitted a timely appeal.

On appeal, states that his wife is not inadmissible under section 212(a)(6)(C)(i) of the Act. He states that his wife was trying to cross the border in order to shop and visit her sister who lives in Kyle, Texas, but was denied entry on the assumption that she planned to remain in the United States. states that his wife did not know the reason for the denial and was denied entry between 1997 and 2005. He states that during the October 31, 2005 interview for immigrant visas for his wife and three children the immigration officer said that in the past the applicant presented false employment documentation and would need a waiver. states that his wife said that she never presented false employment documentation and offered to show the same documentation previously presented. states that the immigration officer repeated that the applicant needed to complete the waiver application.

The AAO will first address the finding of inadmissibility.

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.

U.S. Citizenship and Immigration Services (USCIS) records show that the applicant applied for a permit to travel to Kyle, Texas. As proof of employment, the applicant presented valid pay receipts from Seguro Social. However, her second bi-weekly check stub for February was missing. Further interview established that the applicant was no longer employed with Seguro Social, having been recently terminated. The applicant admitted that her intention was to go to Kyle, Texas, and seek employment and reside there for an indefinite period of time. The applicant withdrew her application for nonimmigrant admission and signed a statement, dated March 2, 1997, wherein it reads, "I understand that my admissibility is questioned for the above reasons, which I have read or which have been read to me in the Spanish language. Although I understand I may choose to appear before an

Immigration Judge for a hearing in exclusion proceedings, I request that I be permitted to withdraw my application for admission and to return abroad." *See* Form I-275 Notice of Visa Cancellation/Border Crossing Card Voidance, dated March 2, 1997.

Based on the applicant's signed statement, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of her true intention in coming to the United States so as to procure admission into the United States.

On appeal, submits the following: an employment letter dated June 5, 2007, and check stubs by Instituto Mexicano del Seguro, the applicant's present employer, as well as a pink slip reflecting the applicant's start of employment with Instituto Mexicano del Seguro. All of these documents are written entirely in the Spanish language and are not accompanied by an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to the Service [now U.S. Citizenship and Immigration Services, "USCIS"] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As the employment letter, check stubs, and pink slip are without an English translation, those documents will carry no weight in this decision. *See*, 8 C.F.R. § 103.2(b)(3). Consequently, the AAO finds that the record establishes the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. The AAO notes that the applicant's husband indicates on appeal that his three children are neither lawful permanent residents nor citizens of the United States. Once extreme hardship is

established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, there is no claim of extreme hardship to in the event that he remains in the United States without his wife, and alternatively, if he joins her to live in Mexico.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.