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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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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 23 2009**

[consolidated therein]

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:

[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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission to the United States by presenting the I-551 Lawful Permanent Resident Card of another person. The record indicates that the applicant is married to a naturalized 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(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse and children.

The Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated February 12, 2007.

On appeal, the applicant, through counsel, asserts that the Director “failed to thoroughly and adequately consider all of the factors that entitle [the applicant] to this waiver.” *Appeal Brief*, page 1, filed March 9, 2007.

The record includes, but is not limited to, counsel’s appeal brief, letters from the applicant’s wife and children, documents regarding the applicant’s wife’s health insurance, and money transfer receipts. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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) 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...

The AAO notes that the record contains several 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 wife 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.

In the present application, the record indicates that on February 10, 1996, the applicant was apprehended after attempting to enter the United States by presenting an I-551 Lawful Permanent Resident Card in someone else's name. On February 15, 1996, an immigration judge ordered the applicant removed from the United States.<sup>1</sup> **On the same day, the applicant was deported from the United States.** On an unknown date before January 31, 1997<sup>2</sup>, the applicant reentered the United States without inspection. On March 27, 1997, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On May 21, 1997, the applicant's Form I-130 was approved. On December 17, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 25, 2002, the applicant divorced his first wife. On February 1, 2003, the applicant married his second wife, [REDACTED] a lawful permanent resident of the United States. On May 20, 2003, the applicant's second wife filed a Form I-130 on behalf of the applicant. On February 5, 2004, the applicant, through counsel, requested that his first Form I-485 be withdrawn. On May 26, 2005, the applicant's wife became a United States citizen. On October 5, 2005, the applicant filed his second Form I-485. On October 24, 2005, the District Director, Los Angeles, California, approved the withdrawal of the applicant's first Form I-485. On June 20, 2006, the applicant filed a Form I-601. On October 6, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). On February 12, 2007, the Director, California Service Center, denied the applicant's Form I-485, Form I-212, and Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative. On March 9, 2007, the applicant, through counsel, filed an appeal of the Form I-212 denial with the AAO. On the same day, the applicant, through counsel, filed an appeal of the Form I-601 denial with the AAO. On July 13, 2007, the AAO dismissed the applicant's appeal on the Form I-212 decision.

The AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

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<sup>1</sup> The applicant was removed under the name "[REDACTED]"

<sup>2</sup> On January 31, 1997, the applicant married his now ex-wife, [REDACTED] in Oxnard, California.

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 naturalized United States citizen 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 asserts that the applicant's "American citizen wife and children will suffer extreme emotional hardship if [the applicant] is deported back to his native country." *Appeal brief, supra* at 3. Counsel states that the applicant is currently employed in the United States earning \$80,000.00 a year, the applicant and his wife recently opened a machine shop, and they recently bought a home. *See id.* In a letter from the applicant's wife, she states that the applicant is the main support for the family, but she does work at USPS. Counsel states that even though the applicant's wife is employed, she could not pay the mortgage without the applicant's income. *See id.* at 4. The AAO notes that it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in Mexico. Additionally, the AAO notes that the applicant's wife is a native of Mexico who speaks Spanish, and it has not been established that she has no family ties in Mexico. In a letter dated March 6, 2007, the applicant's daughter, [REDACTED], states that "[i]t is very heartbreaking just to imagine [the applicant] [not] close to [her].... He always supports [her], he demonstrates a lot of love toward [her], and he always gives [her] advice." In a letter dated March 6, 2007, the applicant's daughter, [REDACTED], states that if the applicant is deported "it wouldn't be fair because he has already formed a family, a job and a great life." Counsel states that if the applicant's children join him in Mexico, they will lose educational opportunities that they have in the United States. Additionally, counsel states that the applicant's oldest daughter is experiencing extreme depression. "upon the realization that [the applicant] may be removed." *Appeal Brief, supra* at 6. The AAO notes that since the applicant's daughter's depression appears to be caused by the separation from the applicant, if the applicant's daughter joins the applicant in Mexico then the depression would presumably no longer be an issue. Additionally, the AAO notes that the applicant's children may experience some hardship in relocating to Mexico; however, as noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joins the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment and with access to educational opportunities for her children. The AAO notes that as a United States citizen, 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. Counsel states that the applicant supports his family in the United States and sends money to his parents in Mexico. *See appeal brief, supra* at 4. The AAO notes that the applicant obtained a technical degree in Mexico, and beyond generalized assertions regarding country conditions in Mexico, 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.