

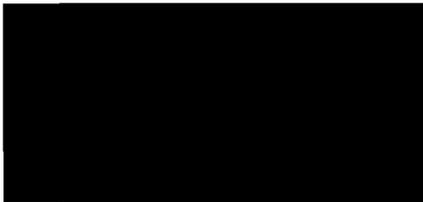
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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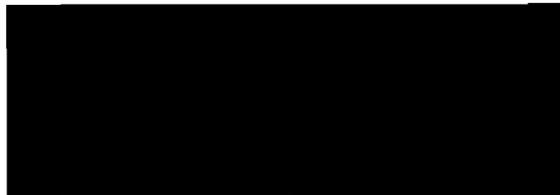
H5

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAR 16 2010**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Ground of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, 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 procured benefits under the Act by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. He 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 child, born in 1994.

The district director 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 District Director*, dated December 15, 2006.

On appeal, counsel submits the following *inter alia*: the Form I-290B, Notice of Appeal (Form I-290B), dated January 12, 2007, a letter from the applicant's spouse, dated January 9, 2007, and copies of documents previously submitted by the applicant with respect to his Form I-212, Application for Permission to Reapply for Admission into the United States Deportation or Removal (Form I-212). In addition, on the Form I-290B, counsel indicates that a brief and/or additional evidence will be submitted to the AAO within 30 days. As of today, no brief and/or additional evidence has been received by the AAO with respect to the instant appeal. As such, the record is considered complete. All documentation contained in the 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...

The record reflects that the applicant entered the United States without inspection and subsequently filed the Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker (SAW) in October 1998. He was granted permanent resident status as of December 1990. In April 1990, the applicant was encountered at the Lubbock, Texas Border Patrol Station. At the time of his interview, the applicant presented his Employment Authorization Card (Form I-688A). *Record of Deportable Alien*, dated April 9, 1990. In a sworn statement, the applicant confirmed that he had obtained fraudulent employment letters which were submitted with his SAW application. *Form I-263B, Record of Sworn Statement*, dated April 9, 1990.

The applicant was ordered deported in March 1992. *See Order of the Immigration Judge*, dated March 30, 1992. The applicant was ultimately removed from the United States on September 24, 2003; his permanent residency status was revoked. *See Notice of Decision*, dated April 26, 2004. As the evidence regarding the applicant's misrepresentation was obtained directly from the applicant, not from his application for temporary status as a Special Agricultural Worker (SAW), the use of this independently-obtained information does not run afoul of the confidentiality provisions set forth in section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6). *See Lopez v. Ezell*, 716 F. Supp. 443, 445 (S.D. Cal. 1989) ("On its face, the language of section 1160(b)(6) does not extend to the information not obtained directly from the application itself."). Accordingly, the evidence in the record supports the district director's determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 U.S. citizen spouse is the only qualifying relative and hardship to the applicant and/or their child 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. In a declaration she states that she is experiencing hardship as she is dependent on her spouse to help with any and all family situations. Moreover, she contends that she has always wanted to have a second child but due to her spouse's inadmissibility, it is not possible. She further notes that her child is suffering hardship due to long-term separation from her father, thereby causing extreme hardship to the applicant's spouse, the only qualifying relative in this case. Finally, the applicant's spouse asserts that since her spouse's departure, she has been solely responsible for paying many of the bills, including mortgage, house taxes and insurance, thereby causing her to experience financial hardship. She notes that she has had to use her credit cards to pay for things that are needed because she does not have the money available to either pay or purchase regular everyday necessities. *Affidavit of* [REDACTED]

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. Nor has it been established that the applicant's child is suffering extreme hardship due to her current living arrangement with her mother in the United States and/or that alternate arrangements for her care, such as a relocation abroad to reside with her father, would cause the child extreme hardship, thereby causing the applicant's spouse extreme hardship. Finally, it has not been established that the applicant's spouse, a native of Mexico, is unable to travel to Mexico on a regular basis to visit her spouse. 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)). Finally, while the AAO sympathizes with the applicant's spouse's desire to have more children, all couples separated due to inadmissibility have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme emotional hardship.

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of*

Pilch, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant's spouse, the record establishes that the applicant's spouse is gainfully employed as a Casualty Adjuster. See *Letter from* [REDACTED] [REDACTED] dated January 27, 2005. In 2005, she made over \$39,000, as noted on the Form W-2 for 2005, well above the poverty guidelines for 2009. See *Form I-864P, Poverty Guidelines for 2009*. No documentation pertaining to the applicant's spouse's current expenses, assets and liabilities has been provided by counsel. It has thus not been established that the applicant's U.S. citizen spouse is unable to support herself financially without the applicant's contributions. The record also fails to establish what specific contributions the applicant made to the household prior to his departure from the United States, to establish that his physical absence is causing extreme financial hardship to his spouse. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording him the opportunity to assist his spouse with respect to their finances. While the applicant's spouse may need to make adjustments with respect to her financial situation and the maintenance of the household while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme emotional and/or financial hardship due to the applicant's inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, counsel notes that the applicant's spouse has not lived in Mexico since she was a little girl, and were she to relocate to Mexico, it would be highly unlikely she would be able to find gainful employment. In addition, counsel notes that all of the applicant's spouse's family members are in the United States and a relocation abroad would separate the applicant's spouse from her family, community and her way of life. *Introductory Letter Explaining Hardship in Support of I-212 Waiver Request from* [REDACTED]. Finally, the applicant's spouse contends that were she to relocate to Mexico, she would not have medical health coverage or any other benefits. *Supra* at 1.

It has not been established that the applicant's spouse would experience extreme emotional hardship were she to relocate to Mexico to reside with the applicant. Nor has it been established that her extended family would be unable to visit her in Mexico or alternatively, that the applicant's spouse would be unable to return to the United States to visit her extended family. Moreover, counsel has

not provided any documentation to substantiate his claim that the applicant's spouse would not be able to find gainful employment with medical coverage. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to reside in the United States and alternatively, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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.