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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE*
*425 Eye Street N.W.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, D.C. 20536*

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: JUL 3 2003

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 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUL0303_02H2212

**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 attempted to procure admission into the United States by falsely claiming to be a United States citizen on July 17, 1993. The record reflects that on October 5, 1993, the applicant was ordered excluded and deported in absentia, pursuant to sections 212(a)(7)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. §§ 1182(a)(7)(A)(i)(i) and 1182(a)(6)(C)(i), as an alien not in possession of a valid immigration document and as an alien who attempted to enter the U.S. by fraud or a willful misrepresentation of a material fact. The applicant is married to a United States (U.S.) citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and child.

The district director found that the applicant failed to establish his wife would suffer extreme hardship if he were removed from the United States. The district director noted that the applicant's child is not considered a qualifying relative for section 212(i), 8 U.S.C. § 1182(i) extreme hardship purposes, and that no proof of the applicant's parent's immigration status or hardship was submitted.

On appeal, counsel states that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizen and Immigration Services, "BCIS") failed to correctly assess emotional, financial, and psychological damage to the applicant's spouse and children. In support of this assertion, counsel re-submitted a sworn affidavit written by the applicant's wife (Ms. [redacted]). The affidavit asserts that Ms. [redacted] and the applicant have been married since 1996 and that they have a 2-year-old child. Ms. [redacted] states that the applicant's parents are U.S. legal permanent residents and that he has no family in Mexico who he can rely upon. Ms. [redacted] states further that she cannot raise her daughter in the United States (U.S.) without her husband and that if he takes their daughter to Mexico, the child will be psychologically traumatized. Counsel additionally submitted copies of joint car and home ownership materials. No other evidence or information was submitted by counsel.

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 may, in the discretion of the Attorney General, 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 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.

A section 212(i) waiver of the bar to admission resulting from 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. Congress specifically did not include extreme hardship to a U.S. citizen or resident child. Ms. [redacted] assertions regarding the hardship her U.S. citizen child would suffer will thus not be considered. Moreover, no evidence was submitted to support the assertion that the applicant's parents are U.S. legal permanent residents, and no argument was made to indicate that they would suffer extreme hardship if the applicant were removed from the United States.

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) provided a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included 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.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship

if he were deported. *Id.*

In the present case, it appears that Ms. [redacted] was aware of the applicant's immigration status at the time of their marriage in 1996. The record reflects that the applicant was ordered excluded and deported from the U.S. in 1993, and that Ms. [redacted] traveled to Mexico in order to marry the applicant. In addition, Ms. [redacted] asserted no health concerns, and no assertions were made regarding her family ties either in Mexico or in the United States. Furthermore, although counsel submitted copies of joint vehicle and home ownership documents, no assertions were made regarding the specific financial impact the applicant's removal would have on Ms. [redacted]

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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. 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.