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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

MAR 12 2003

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

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]

PUBLIC COPY

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

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, 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 procured admission into the United States on April 23, 1998, by presenting fraudulent documents in another person's name. The applicant is therefore 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). The applicant married a native and citizen of Mexico on October 28, 1997 in Mexico. The applicant's spouse became a naturalized U.S. citizen on August 22, 2000 and the applicant is the beneficiary of an approved petition for alien relative. She seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband, and denied the application accordingly.

On appeal, counsel discusses the difficult choice the applicant's husband [redacted] faces in deciding whether to remain in the United States while his wife returns to Mexico, or to accompany her there. Counsel discusses [redacted] job, his purchase of a house, and their two U.S. citizen children. Counsel further states that the district director's decision failed to mention [redacted] father and brothers or his ties to the community and conditions in Mexico.

Counsel makes reference to the cancellation of removal case, *Matter of Gonzalez-Recinas,* Interim Decision 3479 (BIA 2002), in which the Board of Immigration Appeals (the Board) held that the hardship of the parent inherently translates into hardship to the rest of the family.

Section 240A of the Act, 8 U.S.C. § 1229b, provides, in part, for the cancellation of removal of certain nonpermanent resident aliens who have been physically present in the United States for a period of not less than 10 years immediately preceding the date of the application and who establish that removal would result in exceptional and extremely unusual hardship to the alien's U.S. citizen or lawful permanent resident spouse, parent or child.

In this case, the applicant is not in removal proceedings. Although the standard of hardship in cancellation of removal proceedings may be stricter (exceptional and extremely unusual), the scope of the hardship requirement is broader in cancellation of removal proceedings than the extreme hardship requirements in section 212(i) waiver proceedings.

For example, the statute provides for a showing of hardship to a child in cancellation of removal proceedings, but it does not allow for a showing of hardship to a child in 212(i) waiver proceedings.

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.
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> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit,

altered, or falsely made document in order to satisfy any requirement of this Act."

Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including:

> (a) [I]mpersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name . . . *See 18 U.S.C. § 1546.*

In this case, the applicant knowingly obtained a fraudulent Mexican passport with a visa in an assumed name and used the document to procure admission into the United States in violation of section 212(a)(6)(C).

Section 212(i) of the Act provides that a 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 on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez,supra,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her U.S. citizen spouse. Counsel argues that [redacted] would suffer extreme hardship in that, on the one hand, he would be separated from his father and brothers if he moved to Mexico with the applicant. In addition, he would not be able earn much money in Mexico and he would be unable to keep his house in California. Counsel argues, on the other hand, that if [redacted] remains in the U.S. he will be separated from

his wife and youngest child, and that he would have to maintain two households and pay for a babysitter for his elder son.

The applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship based on the factors set forth in *Cervantes-Gonzales, supra*. [redacted] is healthy and a native of Mexico. The record reflects that he met the applicant in Agua de Obispo, Lagos de Moreno, Jalisco, near his hometown in Mexico. The record further reflects that [redacted] mother lives in Agua de Obispo, Lagos de Moreno, Jalisco, and that [redacted] made several extended visits to the town for over three years prior to marrying the applicant there in 1998. Although [redacted] was a legal permanent resident at the time he married the applicant, he was not yet a U.S. citizen. Counsel asserts that [redacted] planned to file a relative petition to bring his wife to the U.S. at the time of the marriage. [redacted] expectations regarding his wife's ability to legally immigrate to the U.S. must realistically have taken a wait of several years into account.

In *Cervantes-Gonzalez* the Board cited *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970) (citations omitted), stating that:

> [E]ven assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States. *Cervantes-Gonzalez* at 567.

Moreover, in *Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991), the Ninth Circuit Court of Appeals stated 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. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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.