

H2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

[Redacted]

FILE: [Redacted]

Office: Los Angeles

Date:

IN RE: Applicant:

[Redacted]

MAY 16 2003

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

MAY1603-04H2212

**DISCUSSION:** The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office 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 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 attempted to procure admission into the United States by fraud or willful misrepresentation in 1977. The applicant seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director denied the application due to the applicant's lack of a qualifying relative.

On appeal, counsel states that the statute in effect in 1977 only applied to misrepresentations made concurrently with an application for entry. It could not be used against her for future entries. Counsel asserts that retroactive application of the current version of the Act is improper. She further asserts that section 212(i) of the Act violates the laws of Equal Protection by failing to list U.S. citizen children as qualifying relatives as in section 212(h).

The record reflects that the applicant attempted to procure admission into the United States by fraud on November 5, 1977, by presenting an Alien Registration Card belonging to another person, [REDACTED]. Upon questioning, the applicant stated that her true name was [REDACTED]. Prosecution was declined and she was voluntarily returned to Mexico.

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.

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

Counsel's argument that the current law is not applicable to the applicant is not persuasive.

Congress' intent 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. Congress made the amended statute applicable to the receipt of visas to, and admission of, aliens who committed acts of fraud or misrepresentation, whether those acts occurred before, on, or after the date of enactment.

With regard to counsel's argument that section 212(i) violates the laws of equal protection, the Bureau cannot pass upon the constitutionality of the statute it administers. See *Matter of Church of Scientology International*, 19 I&N Dec. 593 (Comm. 1988). Moreover, it is settled that an immigration judge and the Board of Immigration Appeals lack jurisdiction to rule upon the constitutionality of the Act and the regulations. See *Matter of C-*, 20 I&N Dec. 529 (BIA 1992). As such, the issue of equal protection and fairness will not be addressed.

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).

The record reflects that the applicant's spouse, J. Martel Chavez Messina, is neither a United States citizen nor a lawful permanent resident of the United States. Therefore, the applicant has no qualifying relatives.

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.