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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DENVER, COLORADO Date: MAR 2 9 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director Denver, Colorado. The matter 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. On November 28, 1992 he 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 having sought to procure admission into the United States by fraud or willful misrepresentation of a material fact. In addition, on September 29, 1995 the applicant procured an Alien Registration Card (Form I-551) by fraudulently assuming his brother's identity. The applicant is the beneficiary of an approved Form I-360, Petition for Amerasian, Widow, or Special Immigrant based on abuse by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant or on a qualifying relative. The application was denied accordingly. *See District Director Decision* dated March 6, 2003.

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 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 [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record reflects that on November 28, 1992 the applicant used a counterfeit resident alien card in an assumed named in an attempt to gain admission into the United States by fraud or willful misrepresentation of a material fact. On January 26, 1993 an Immigration Judge order the applicant excluded from the United States. Additionally, the record of proceedings reflects that on September 29, 1995 the applicant submitted an

Application to Replace Alien Registration Card using his brother's name and received a Form I-551 by willfully misrepresenting a material fact. After he received the Form I-551 he assumed his brother's identity and continued to live and work in the United States in violation of immigration law.

On appeal, counsel states that Citizen and Immigration Services, (CIS) applied the wrong legal standard, using the standard for a general waiver of fraud rather than the Congressionally mandated, more liberal Violence Against Women Act (VAWA)-specific waiver. There is an exception under VAWA for waivable acts committed as a direct result of the abuse suffered. In the present case counsel is asserting that the applicant's procurement of the fraudulent I-551 was the result of intense pressure, manipulation, harassment, and abuse inflicted by his former U.S. citizen spouse. However, it has not been shown that his 1992 illegal entry using a fraudulent document was in any way related to his abusive spouse. As such, he is still inadmissible under section 212(a)(6)(C)(i) and must meet the requirements of section 212(i) of the Act. While section 212(i) of the Act expands the list of qualified relatives for a VAWA applicant, it does not change the standard of extreme hardship that must be shown.

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 the applicant or a qualifying family member. 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 the present case, the applicant is single and claims no biological or legal children. His parents reside in Mexico and are neither U.S. citizens nor lawful permanent residents of the United States. Therefore the applicant must demonstrate extreme hardship to himself.

On appeal counsel states that if the applicant were removed to Mexico hardship would be imposed on his U.S. citizen fiancée her two children and the applicant's parents who reside in Mexico. As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act to an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), is dependent first upon a showing that the bar imposes an extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child. Congress did not mention extreme hardship to a U.S. citizen or resident fiancée or to parents who are not U.S. citizens or residents. Counsel's assertions regarding the hardship the applicant's U.S. citizen fiancée, her two children, and the applicant's parents will thus not be considered.

Counsel states that the applicant has lived in the United States for more that eleven years, has no criminal record and is a part owner of a property management/ownership company. She further asserts that if the applicant is not permitted to remain in the United States he will lose his job and will be forced into a life of poverty. No reason was provided as to why the applicant, a native and citizen of Mexico, would not be able to obtain gainful employment in Mexico.

It has been found that the personal deprivation contemplated in a situation characterized by "extreme hardship" within the meaning of section 244 of the Act is not a definable term of fixed and inflexible content or meaning; it necessarily depends upon the facts and circumstances peculiar to each case. *Matter of Hwang,* 10 I&N Dec. 448 (BIA 1964). The hardship requirement encompasses more than the mere economic deprivation that might result from an alien's deportation from the United States. *Davidson v. INS,* 558 F.2d 1361 (9th Cir. 1977) and *Matter of Sipus,* 14 I&N Dec. 229 (BIA 1972). It has also been found that the loss of a job and the concomitant financial

loss incurred is not synonymous with extreme hardship. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Uy,* 11 I&N Dec. 159 (BIA 1965).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that he would suffer extreme hardship if he were not permitted to remain in 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.