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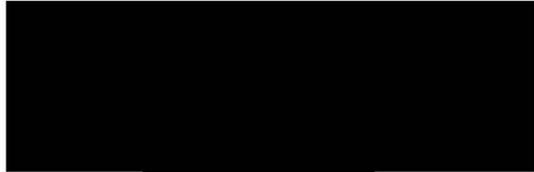
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U.S. Department of Homeland Security
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Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

H2



FILE:

Office: PHOENIX, AZ

Date:

NOV 26 2008

IN RE: Applicant:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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, a native and citizen of Mexico, attempted to procure entry to the United States in June 1995 by falsely claiming United States citizenship; he presented a U.S. birth certificate belonging to another individual.¹ The applicant was thus 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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.²

¹ On appeal, the applicant contends that he did not attempt to enter the United States by presenting evidence of U.S. citizenship, but rather, by presenting an expired Amnesty card. The Record of Deportable Alien states, in pertinent part:

Subject [the applicant] was a passenger in the vehicle driven by [REDACTED] [REDACTED]... He [the applicant] declared his citizenship as a U.S. citizen, born in Yuma, Arizona. The birth certificate was in the name of [REDACTED]. The vehicle was referred to secondary. From the vehicle secondary area to the main immigration building the subject absconded to Mexico. He took with him the birth certificate in the name of [REDACTED]. The driver of the car was convinced to bring back the subject from Mexico.... The driver...returned to the immigration office, she had with her the subject, [REDACTED], [REDACTED] [the applicant] who was the correct person who had claimed to be a U.S. citizen and had presented a birth certificate in the name of [REDACTED]....

Record of Deportable Alien, dated July 2, 1995.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Despite the applicant's assertions to the contrary, it has been established that the applicant made a false claim to U.S. citizenship when he attempted entry to the United States in June 1995. He is thus subject to section 212(a)(6)(C)(i) of the Act.

² The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 22, 2006.

In support of the appeal, the applicant submits a brief, dated August 30, 2006. The entire 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 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

official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. As the applicant made a false claim to U.S. citizenship in June 1995, the applicant is eligible for a waiver pursuant to section 212(i) of the Act.

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.

This matter arises in the Phoenix district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated: “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant references the hardships the applicant’s three U.S. citizen children would face were the applicant removed. 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. In the present case, the applicant’s U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their U.S. citizen children cannot be considered, except as it may affect the applicant’s spouse. It has not been established that the repercussions to the applicant’s children due to the applicant’s removal would cause the applicant’s spouse extreme hardship.

The applicant further asserts that his U.S. citizen spouse would experience emotional hardship were the applicant removed from the United States. As stated by the applicant,

As a marriage that we are, my wife and I need each other for emotional support.... We are a close knit family and would like for our relationship to maintain itself....

Letter from [REDACTED], dated August 1, 2006.

There is no documentation establishing that the applicant’s spouse’s emotional hardship is any different from other families separated as a result of immigration violations. Moreover, it has not been established that it would be an extreme hardship for the applicant’s spouse to visit the applicant on a regular basis, considering the proximity between Arizona and Mexico. The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United

States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

Moreover, the applicant asserts that his U.S. citizen spouse will suffer financial hardship if he is removed from the United States. As stated by the applicant,

There are financial considerations to consider. If I have to leave the country my children and wife would suffer greatly financially. As you are aware labor in Mexico does not pay as much as here in the U.S. and I am the only working adult providing for my family at the moment. My wife is a seasonal labor worker. Like in every family there is a rent to pay, groceries to buy, gas to pump amongst other expenses. My salary in Mexico would not be enough to financially support my family throughout the whole year....

Id. at 1.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant’s and his family’s financial situation, including income and expenses, assets and liabilities. The applicant has thus failed to show that his absence will cause extreme financial hardship to the applicant’s spouse. Nor has the applicant documented that his spouse is unable to obtain gainful employment to support herself and her children. In addition, the

applicant has not established that were he removed, he would be unable to obtain employment abroad and assist in supporting his family. 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)). Thus, the AAO concludes that it has not been established that the applicant's U.S. citizen spouse will suffer extreme hardship were the applicant removed from the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's U.S. citizen spouse is unable to relocate to Mexico, or any other country of their choosing, to accompany the applicant were he removed. Although references are made to the hardships the children would encounter were they to relocate to Mexico, only hardship to the applicant's spouse may be considered, as previously noted, and no documentation has been provided to establish that academic hardship to the children were they to relocate to Mexico would cause the applicant's spouse extreme hardship. In fact, the AAO notes that the applicant's spouse has not provided any statement in support of the applicant's waiver request, outlining the hardships she would face were the applicant removed from the United States.

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. The waiver application is denied.