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Office: LOS ANGELES, CA

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IN RE:

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:

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, Los Angeles, California. The matter 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 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States 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 her spouse and children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 23, 2004.

On appeal, counsel asserts that Citizenship and Immigration Services erred in deciding the applicant's case because the applicant has demonstrated that she satisfies the factors identified in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) and, therefore, is entitled to a favorable decision. *Form I-290B*, dated July 7, 2004.

In support of these assertions, counsel submits a brief, dated July 12, 2004. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that in December 1997, the applicant applied for admission into the United States by presenting an Alien Registration Card (Form I-551) that was not issued to her.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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.

A section 212(i) waiver of the bar to admission resulting from violation of 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 of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to

section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems 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; 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.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel asserts that applicant's spouse has many close family members in the United States and that his family ties in the United States are stronger than those in Mexico. *Brief* at 3. Counsel indicates that the applicant's spouse would be denied access to suitable medical care for his work-related injuries if he resided in Mexico. *Id.* Counsel states that the applicant's children would be deprived of educational opportunities that they enjoy in the United States if they moved to Mexico. *Declaration of Pablo Gonzalez*, dated September 10, 2001. The AAO notes that the children of the applicant are not qualifying family members for purposes of proceedings under section 212(i) of the Act, however hardship imposed on the children of the applicant and her spouse is considered insofar as it imposes hardship on the qualifying relative in the application, namely the applicant's spouse.

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if he remains in the United States maintaining his proximity to family members, access to adequate medical care and access to educational opportunity for his children. Counsel asserts that the applicant's spouse requires the applicant's physical assistance as a result of his physical impairment. *Brief* at 2 ("Her lawful permanent resident spouse (husband) relies on her for physical, emotional, psychological and financial supports because of his disability."). The AAO acknowledges that the applicant's spouse has suffered back injuries, has undergone surgery and was awarded disability benefits as a result of a work-related incident. *See Medical Records and Compensation Insurance Claims Paperwork for Pablo Gonzalez*. The AAO notes, however, that the record fails to establish that the assistance of the applicant is required for the applicant's spouse to function in day-to-day life and perform typical activities. While the AAO recognizes that the applicant's spouse will suffer hardship as a result of separation from the applicant, the statements of counsel, standing alone, fail to establish that the "physical, emotional, psychological and financial" needs of the applicant's spouse are compromised to the level of extreme hardship. Similarly, counsel's assertion that the applicant's daughter would lack "the initiative to finish school or to become a fine upstanding citizen" is a statement lacking substantiation in the record. While the record reflects that the applicant has served as a positive role model in her daughter's life, the record fails to demonstrate that the applicant's daughter will not complete school in the absence of the applicant. *Narrative of Lidia Gonzalez' Family*, signed by Carrye Washington.

Counsel contends that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse and children if they remain in the United States in the absence of the applicant. *Declaration of Pablo Gonzalez*. Counsel indicates that the applicant's presence is required in order for her spouse to afford their home mortgage. *Id.* The AAO finds that the record fails to establish that the living arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Further, the record fails to demonstrate that the applicant will be unable to provide financial support to her family from a location outside of the United States. Moreover, the U.S. Supreme Court 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.

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. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, if he 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* 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.