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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA Date:

JUL 15 2005

IN RE:

[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]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA 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 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 seeking to procure admission to the United States by fraud or willful misrepresentation. The applicant is the daughter of a U.S. citizen and spouse of a lawful permanent resident. The applicant 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 family.

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. *Decision of District Director*, dated June 2, 2004.

On appeal, counsel asserts that the district director's decision made no reference to the U.S. citizen children of the applicant and extreme hardship would result if the applying mother's waiver was denied and the psychological evaluation demonstrates extreme hardship to the family unit. *See Form I-290B*, filed on June 21, 2004.

In support of the appeal, counsel submits a psychological evaluation. The record also contains evidence from the initial I-601 filing which includes affidavits from the applicant, her spouse and her mother. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant applied for entry into the United States from Mexico using an I-551 (Resident Alien Card) that did not belong to her. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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.

Counsel first asserts that the district director's decision made no reference to the U.S. citizen children of the applicant and extreme hardship would result if the applying mother's waiver was denied. *See Id.* The AAO understands counsel's argument to be that the children would suffer extreme hardship if the applicant's waiver were denied. The district director's decision states that the hardship caused to the children cannot be considered. *Decision of District Director*, at 2. The AAO agrees with this statement as section 212(i) of the Act does not list children as qualifying relatives for purposes of establishing extreme hardship.

Counsel's second contention is that the psychological evaluation demonstrates extreme hardship to the family unit. *See Form I-290B.*

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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis is appropriate under this case for the applicant's mother and spouse. The psychological exam is given its due weight in this decision. In regard to the applicant's mother, the record indicates that she has three U.S. citizen grandchildren and a lawful permanent resident spouse in the United States. The record is not clear as to whether she has any other lawful permanent resident or United States citizen family ties to this country. The record does not indicate whether the applicant's mother has any family ties outside of the United States. The record does not include any information on the conditions in Mexico or the extent of the applicant's mother's ties to Mexico. The psychological report indicates that the applicant's mother lives with the applicant and that she would become homeless if the applicant were deported as there is no room at her other children's homes. *See Psychological Assessment Interview*, at 6, dated June 9, 2004. However, no documentation is provided to support this assertion. The same report states that the mother suffers from high blood pressure, severe varicose veins and that separation will likely lead her to depression and anxiety. *Id.* at 6-7. The record does not include any documentation verifying these medical problems or the inability to receive suitable treatment in Mexico. Furthermore, the applicant's mother was not even present at the psychological assessment interview. Extreme hardship has not been shown in the event that the applicant's mother relocates to Mexico or in the event that she remains in the United States.

In regard to the applicant's husband, the record indicates that he has five brothers in the United States although their legal status is not clear. The record indicates that the parents and two sisters of the applicant's spouse live in Mexico. The record does not include any information on the conditions in Mexico or the ties of the applicant's spouse to Mexico. The psychological report states that the applicant's spouse would lose his job, assets and property if he relocated to Mexico. *Id.* at 6. In regard to relevant conditions of health, the AAO gives little weight to the psychological evaluation submitted by counsel. First, the evaluation does not indicate any psychological problems for the applicant's spouse that are beyond those experienced by others in the same situation. Furthermore, the psychologist is very speculative throughout her analysis, including the effect of the applicant's departure on her spouse. The evaluation lists adjustment disorder with anxiety as the

diagnosis for the applicant's spouse. *Id.* at 10. However, the evaluation made no mention of the need for treatment, a follow-up evaluation or whether the applicant's spouse is currently receiving any treatment for this problem. The record does not indicate whether treatment, if applicable, is available in Mexico. Therefore, extreme hardship has not been shown in the event that the applicant's spouse relocates to Mexico or in the event that he remains in the United States.

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 and mother will endure hardship as a result of separation from the applicant. However, their situation, if they remain 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.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother or 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.