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

H2

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, ARIZONA

Date: MAY 24 2005

IN RE:

[REDACTED]

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

For 
Robert P. Wiemann, Director
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 is a native and citizen of Mexico who was found to be inadmissible to the United States under § 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 § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and child.

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. On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in denying the application for waiver, since the record establishes that the applicant's husband will experience extreme hardship whether he remains in the United States or relocates to Mexico.

In support of these assertions, counsel submits a brief, a psychological evaluation for the applicant's husband, a consular information sheet about Mexico, and other documentation. The AAO has reviewed the entire record and concurs with the district director's determination in this matter.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by trying to procure admission by claiming to be a United States citizen.

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.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 herself or her child experiences upon removal is irrelevant to § 212(i) waiver proceedings. In this case, the only relevant hardship would be that suffered by the applicant's husband or lawful permanent resident (LPR) parents. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include the presence of an LPR or U.S. 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 extreme hardship as a result of relocating to the applicant's homeland, as he has no family ties in Mexico, and he does not speak Spanish. Counsel asserts that the applicant's husband has a well-founded fear of harm in Mexico based on his being a former member of the U.S. armed forces. Counsel also states that the applicant's husband would be unable to find employment, causing him and his family to suffer extreme financial hardship. The consular information sheet submitted on appeal recounts societal problems in Mexico, such as a high rate of crime and a weaker infrastructure as compared to standards enjoyed in the United States. An additional article included on appeal tells of anti-American sentiment in Mexico. There is no information, however, in the submitted information to support counsel's claim that the applicant's husband would be at greater risk than the general populace on account of his status as a former member of the U.S. military. The record also contains no documentation with regards to counsel's assertion that the applicant's husband would be unable to encounter employment in Mexico. Moreover, the fact that the applicant might not enjoy the same standard of living in the country of relocation as he does in the United States does not constitute extreme hardship. The AAO notes that 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.

The record also does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment and proximity to other family members. Counsel claims, however, that the applicant's husband would experience greater trauma upon separation from the applicant than other, similarly situated spouses. Counsel refers to a psychological assessment prepared by Garry L. Feldman, Ph.D. on April 13, 2004, based on an unknown period of interaction with the applicant's husband. Dr. Feldman states that he interviewed the applicant's husband together with the applicant and by himself, and that he administered a battery of psychological tests to the applicant's husband. Dr. Feldman's report appears to recount facts as related by the applicant's husband, such as that the latter fears the applicant will take her life if she is separated from her husband and child. Other than statements told to Dr. Feldman by the applicant's husband, it is not apparent what sources Dr. Feldman drew upon in order to arrive at his conclusions. Nevertheless, Dr. Feldman states that the applicant's husband is "an essentially psychologically healthy individual" who will "most likely be a less positive contributor to his society" should the applicant be removed. Dr. Feldman expresses the opinion that the applicant's inadmissibility would constitute extreme psychological hardship for her husband.

There is no indication that the applicant's husband sought any medical or psychological therapy prior to or subsequent to his meeting with Dr. Feldman, nor does the latter recommend any treatment. Dr. Feldman does not conclude that the applicant's husband is in danger of becoming unable to care for himself or his child or of losing his ability to function normally. In sum, the psychological evaluation does not provide evidence that the applicant's husband will undergo extreme emotional hardship in the event the applicant is removed.

The AAO recognizes that the applicant's husband endures 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 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.

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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.