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

flr

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **AUG 22 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 (U.S.) 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 admission into the United States by fraud or willful misrepresentation on November 27, 1995. The applicant married a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that there was no evidence in the record to support a finding that the applicant's spouse would experience any extreme hardship as a result of the applicant's removal. The application was denied accordingly. *District Director's Decision*, dated November 3, 2004.

On appeal, counsel asserts that examining the factors in their totality, it is clear that the equities far outweigh any adverse factors and that the effect of the applicant's child's health condition on the U.S. citizen spouse makes the applicant's case unusual and is not usually seen in the event of removal. *Counsel's Appeals Brief*, dated November 29, 2004.

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.

The record indicates that on November 27, 1995 the applicant presented herself as a U.S. citizen at the immigration checkpoint in San Clemente, CA in the attempt to gain the immigration benefit of continued residence in the United States. A 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 a qualifying family member. Hardship the alien herself experiences or her child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to 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 Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. **The AAO will consider the relevant factors in adjudication of this case.**

The applicant and her spouse have been married for nine years and have three children. In her brief, counsel states that if the applicant were removed it would cause the applicant's spouse extreme hardship because the applicant cares for their severely disabled son. The applicant submitted a letter from his son's doctor, [REDACTED] dated November 22, 2004 that supports his claim concerning his son's disability. [REDACTED] states that the applicant's son suffers from Scimitar Syndrome, a rare cardiopulmonary disease causing inadequate growth of the right lung. The applicant's son also suffers from asthma and scoliosis in his back where there is a high risk of progression for his curve. [REDACTED] states that the applicant's son is cared for by the applicant who takes him to all his medical appointments. Counsel also states that the applicant's son attends special education classes and that the applicant's spouse needs the applicant's emotional and physical support in caring for their son.

In addition, counsel asserts that the applicant's spouse will suffer extreme hardship as a result of relocating to Mexico. Counsel states that the applicant's spouse cannot relocate to Mexico because his disabled son cannot relocate to Mexico and he does not want to be separated from his son. In addition, counsel asserts that the applicant's spouse would have to leave his employer if he relocated to Mexico, where he has been employed since 1992. The AAO notes that no documentation was submitted to support counsel's statements regarding the applicant's family relocating to Mexico.

The AAO finds that the applicant has not established that her spouse would suffer extreme hardship as a result of her inadmissibility. The record does not indicate that the applicant's disabled son requires the constant care of either parent. The son's school record indicates that, "he is very athletic and is able to perform well in most gross motor skills." *School Record*, dated August 3, 2003. This assessment of the applicant's son does not reflect a need for constant care or supervision. The note from [REDACTED] indicates that the applicant takes her son to medical appointments, but does not states that the son requires the applicant's help in performing daily activities. Also, counsel failed to demonstrate how the potential hardships to the applicant's son caused hardship to the applicant's spouse. As stated above, hardship the applicant's child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. Furthermore, no documentation was submitted to show that the applicant's spouse would not be able to find employment or adjust to life in Mexico. Therefore, the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

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 section 212(a)(6)(C) 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.