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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

FILE:

Office: LOS ANGELES, CA

Date: DEC 01 2006

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (the 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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico who attempted to enter the United States on August 26, 1995, using an alien registration card (Form I-551) that did not belong to her, and applied for adjustment of status on April 30, 2001. In order to remain in the United States with her U.S. citizen (USC) spouse and USC children, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for her inadmissibility under section 212(a)(6)(C)(i) for having sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that on August 26, 1995, [REDACTED] attempted to enter the United States by presenting a Form I-551 not belonging to her to an immigration officer in order to procure admission into the United States. She was placed in Service custody and removed from the United States on August 30, 1995. As a result of the applicant's misrepresentation, the district director found her to be inadmissible to the United States. *District director's decision, dated April 14, 2005.* The district director also found that the applicant 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). *Id.*

On appeal, counsel submits a brief and a previously submitted statement from [REDACTED] dated May 12, 2005. The record includes the following: an employment verification letter for [REDACTED] a statement from [REDACTED] dated June 30, 2003; an employment verification letter for [REDACTED] a copy of [REDACTED] United States birth certificate; copies of the birth certificates of their two USC children, [REDACTED] age 8, and [REDACTED] age 9; a copy of the couple's marriage certificate; and income tax records from 1999-2001. The AAO reviewed the entire record in arriving at a decision on the appeal.

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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship the applicant herself experiences upon denial of her application for admission is not considered in section 212(h) waiver proceedings. Hardship the applicant's children experience is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant's USC husband.

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 applicant has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel asserts that [REDACTED] one incident of misrepresentation should be balanced against a number of favorable factors according to *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978). This is incorrect. The correct legal standard of analysis is whether the denial of [REDACTED] Form I-601 will result in extreme hardship to her qualifying relative, her USC husband, [REDACTED]. *See section 212(i) of the Act*. Only if extreme hardship is established will the favorable factors in the case be weighed against the unfavorable factors, in the exercise of discretion. *See Matter of Mendez*.

Counsel asserts that [REDACTED] would suffer extreme hardship if [REDACTED] Form I-601 is denied because without the presence of his wife he could not perform his job and as a result he would lose his home, his job, and his children would lose their medical benefits. Counsel has not established why [REDACTED] and his children could not relocate to Mexico to avoid separation from [REDACTED]. In addition counsel has

submitted no documentation to show that [REDACTED] cannot financially provide for himself and his two children in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

[REDACTED] asserts that in [REDACTED] absence, he would be unable to afford childcare for his children while he works that nightshift for FedEx. [REDACTED] further asserts that [REDACTED] supplemental income allows him to pay his mortgage and buy food for the family. [REDACTED] did not submit a breakdown of his expenses or documentation regarding the average price of childcare in his area to show that he would be unable to pay his expenses or that inability to pay these expenses would result in uncommon or extreme hardship to him. 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)).

[REDACTED] asserts that if his wife were forced to depart the United States, he would accompany her with his children. He states that it would be an economic and lifestyle change, but does not argue and submits no documentation to establish that relocating to Mexico together with his wife and children would result in extreme hardship.

Counsel asserts that [REDACTED] children are young and unable to relocate to Mexico. Counsel asserts that the children would be deprived of a good education and be subjected to poverty if they relocate to Mexico. Direct hardship to the applicant's children is not considered in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is left alone in the United States to care for children, it is reasonable to expect that the children's emotional state due to separation from the other parent will have an impact on the qualifying relative. Yet counsel has not established that the applicant's husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility.

Other than a statement from [REDACTED], in which he notes his love for and attachment to his wife, (*See Mr. [REDACTED]'s hardship statement*), no objective evidence was submitted to supplement [REDACTED] claim of extreme emotional hardship. Although it is clear that her husband will suffer emotionally, if [REDACTED] is not admitted to the United States, he faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on [REDACTED] husband, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does not meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] spouse faces extreme hardship if [REDACTED] is refused admission and

her spouse chooses to remain 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that [REDACTED] deportation would cause to his spouse and children). *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra*, at 468.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant or if he relocates to Mexico with her to avoid separation, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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)(9)(B) 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.