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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: JUN 20 2006

IN RE:

Applicant:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her permanent resident husband and U.S. citizen children.

The district director concluded 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 13, 2004.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated April 13, 2004. Counsel asserts that the district director failed to adequately instruct the applicant as to what evidence is required in order to show extreme hardship. *Id.* Counsel further notes that the district director referred to the applicant's husband as a U.S. citizen when he is in fact a permanent resident, and such lack of attention to the details of the applicant's case reflects that her application was not given a thorough review. *Id.*

The record contains a brief from counsel; a copy of the applicant's marriage certificate; copies of birth certificates of the applicant's children; tax records for the applicant and her husband; copies of bank statements; statements from the applicant's husband, father-in-law, mother-in-law, and son; copies of the permanent resident cards of the applicant's husband, mother-in-law and father-in-law; reports on conditions in Mexico; verification of the applicant's husband's employment; a Form I 864, Affidavit of Support, filed by the applicant's husband on her behalf, and; a sworn statement from the applicant regarding her attempted entry to the United States using a fraudulent document. The entire record was considered in rendering this decision on 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.

The record reflects that the applicant attempted to enter the United States in January 2000 using a fraudulent entry document. Thus, the applicant sought to procure admission into the United States by fraud or willful misrepresentation. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest her inadmissibility on appeal.

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 herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's permanent resident husband. 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 Bureau 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.

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).

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated April 13, 2004. The applicant's husband indicates that he and his children are close with the applicant, and that the applicant contributes greatly to their household. *Statement from Applicant's Husband*, dated March 26, 2004. The applicant's husband explained that the applicant cares for their three children while he works, and that he would be unable to maintain his current employment and care for their children alone. *Id.* Specifically, he provided that he sometimes works a shift from 3:00PM to 3:00AM, and that to accept an earlier shift would necessitate a drop in his income rendering it difficult to provide for his family. *Id.* He stated that he would be unable to afford childcare with less income. *Id.* The applicant's husband stated that there is no primary school in Mexico where he is from, and that he will suffer emotionally if his children are deprived of the benefits of residing in the United States. *Id.* He indicated that he would be unable to support a household in the United States and Mexico simultaneously. *Statement from Applicant's Husband in Support of Form I-601 Application*, dated July 3, 2003.

The applicant's mother-in-law and father-in-law provided that the applicant provides care for her children and that the applicant is close with her husband. *Statements from the Applicant's Mother-in-law and Father-in-*

law, dated March 24, 2004. They explained that the location in Mexico where they are from only contains a small ranch with no primary school, doctor, or employment opportunities. *Id.*

The record contains a hand-written statement from the applicant's son in Spanish in which he expresses that the applicant provides care for him and his younger siblings, and he wishes to keep his family together. *Statement from the Applicant's Son*, dated March 18, 2004. He further states that he is concerned regarding whether his father can support him without the applicant. *Id.*

Counsel states that the applicant and her husband purchased a home and they pay their taxes. *Brief from Counsel*, dated April 13, 2004. Counsel provides that the applicant's husband's parents are permanent residents in the United States, and that the applicant's husband has lived and worked here for over 10 years. *Id.* Counsel further indicates that crime is prevalent in Mexico, implying that the applicant's husband faces possible harm should he return there. *Id.* Counsel asserts that the district director failed to adequately instruct the applicant as to what evidence is required in order to show extreme hardship. *Id.* Counsel further notes that the district director referred to the applicant's husband as a U.S. citizen when he is in fact a permanent resident, and such lack of attention to the details of the applicant's case reflects that her application was not given a thorough review. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant's children will endure if the applicant departs. However, hardship to the applicant's children is not a relevant concern in the present matter. Section 212(i)(1) of the Act. The AAO acknowledges that the applicant's children will bear significant consequences if separated from the applicant or if they relocate to Mexico. Yet, only hardship to the applicant's husband may be properly considered in this section 212(i) waiver proceeding.

Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. 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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The applicant's husband has expressed that he is close with the applicant, and that he will experience emotional hardship if he is separated from her. The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his children's loss of the applicant's daily presence. However, the applicant has not established that her husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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. Thus, the applicant has not shown that her husband's emotional hardship will rise to the level of extreme hardship.

The applicant's husband indicates that he will experience economic hardship if the applicant departs the United States. He provides that he will be unable to afford childcare if he is compelled to alter his employment situation, and he will not have sufficient income to support separate households in the United States and Mexico. However, the record reflects that the applicant's husband earned \$60,150 in 2002, and \$46,545 in 2003, income above the 2006 poverty line for a family of five. *Form I-864, Affidavit of Support*, dated July 18, 2003; *IRS Form 1040 for 2003*. While the applicant's husband provides that he would be forced to alter his working schedule which would result in a reduction of his income, the applicant has not explained or documented this assertion, or identified the amount of such potential reduction. Further, the applicant has not shown that she would be unable to work in Mexico in order to provide for her needs without complete reliance on her husband. 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)). Accordingly, the applicant has not established that her husband would be unable to meet his and his children's economic needs in her absence.

The record contains explanations of hardships that the applicant, her children, and her husband would face should they relocate to Mexico. The applicant's family members provide that the place where they would reside in Mexico contains no primary school, medical services, or employment opportunities. However, the applicant has not established that she or her husband would necessarily have to reside in the location where her family has been. The applicant and her husband would be free to reside in more developed areas of Mexico where they might find a complete host of services and more viable employment. As the applicant's husband is a native of Mexico, it is evident that he would not be faced with the challenges of adapting to a new language and culture should he return there. It is also noted that the applicant's son submitted a handwritten statement in Spanish, thus he would not be forced to learn an unfamiliar language which might otherwise impact his educational progress. Counsel implies that the applicant's husband may face crime in Mexico, yet the record lacks clear evidence that the applicant's husband would face crime that is significantly greater than that in the United States. The AAO acknowledges that the applicant's husband would endure substantial challenges if he returns to Mexico with the applicant, including relinquishing his employment and related opportunities in the United States. However, the applicant has not shown that her husband's hardship would rise to the level of extreme hardship should he choose to maintain family unity by relocating with her. It is further noted that, as a permanent resident, the applicant's husband is not required to reside outside of the United States as a result of the applicant's inadmissibility.

Counsel asserts that the district director failed to adequately instruct the applicant as to what evidence is required in order to show extreme hardship. Yet, the record shows that the applicant was given a document to guide her in collecting evidence and answering important inquiries regarding possible hardships to her qualifying family members. *CIS Correspondence to Applicant*, dated May 22, 2003. Further, 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. The district director cannot be held accountable for the fact that the applicant failed to submit sufficient evidence with her Form I-601 application.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.

Again, 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.