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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: PHOENIX

Date: MAY 23 2006

IN RE:

APPLICANT:

[Redacted]

PETITION:

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 PETITIONER:

[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, Phoenix, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing that she is a U.S. citizen for the purpose of obtaining a benefit under the Act (admission to the United States.) 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 with her U.S. citizen husband and child.

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 October 19, 2004.

On appeal, counsel for the applicant contends that the district director applied an erroneous legal standard, and failed to fully consider the submitted evidence. *Statement from Counsel on Form I-290B*, dated November 17, 2004. It is noted that counsel previously asserted that the applicant is not inadmissible, as she did not claim that she is a citizen of the United States for the purpose of obtaining a benefit under the Act. *Statement from Applicant's Prior Counsel in Support of Form I-601 Application*, dated June 3, 2004.

The record contains a statement from counsel on Form I-290B; a statement from counsel submitted as an attachment to Form I-290B; statements from counsel in support of the Form I-601 application; statements from the applicant, the applicant's husband, the applicant's son, the applicant's friends, the applicant's coworkers and employers, and the applicant's sister; a copy of the applicant's passport; a copy of the applicant's marriage certificate; a copy of the birth certificate for the applicant's husband; copies of photographs of the applicant and her family members; documentation to reflect that the applicant and her husband own a home; tax and financial records for the applicant and her husband; a copy of the applicant's birth certificate; a Form I-864, Affidavit of Support, submitted by the applicant's husband on behalf of the applicant; a statement regarding the applicant's monthly expenses as of 1991, and; evidence of the applicant's automobile and home insurance. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.
- (ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Applicants who made a false claim to U.S. citizenship prior to September 30, 1996 are eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record reflects that the applicant was apprehended by immigration authorities at her place of work on October 9, 1991. Citizenship and Immigration Services (CIS) records reflect that, in a subsequent conversation, the applicant stated to an immigration officer that she entered the United States at El Paso, Texas on August 15, 1991 by claiming that she was a United States citizen. Thus, the applicant made a false claim to U.S. citizenship for the purpose of obtaining a benefit under the Act (admission to the United States.) Therefore, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). While the applicant and counsel previously asserted that the applicant has not claimed to be a U.S. citizen, CIS records reflect the contrary. The applicant has not presented evidence in this proceeding to contradict CIS records of her prior statements.

Thus, the applicant has not established that she was erroneously deemed inadmissible under section 212(a)(6)(C)(ii) of the Act.

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 himself 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 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).

The applicant's husband stated that the applicant contributes greatly to his life and household. *Statement from Applicant's Husband Submitted with Form I-601 Application*, dated May 17, 2001. He and the applicant's coworkers, relatives, and friends laud her character and efforts to help others. *Id.*; *statements from the applicant's friends, the applicant's coworkers and employers, and the applicant's sister*. The applicant's husband indicated that the applicant is of particular benefit to him due to his "unstable medical conditions." *Statement from Applicant's Husband Submitted with Form I-601 Application*, dated May 17, 2001. The applicant provided that her husband has been diagnosed with diabetes, and his health has declined. *Statement from Applicant*, dated May 24, 2001. The applicant stated that she tries to "keep a balance in all kinds of emotions" since her husband's diagnosis. *Id.*

The applicant's son stated that the applicant has provided guidance and support for him. *Statement from Applicant's Son Submitted with Form I-601 Application*. The applicant expressed that she wishes for her son to remain in the United States so that he can avail himself of the benefits of residence here. *Statement from Applicant*, dated May 24, 2001.

Counsel previously asserted that the applicant's husband would experience hardship if he relocates to Mexico, as he does not speak Spanish, he would lose his retirement and employment benefits in the United States, and he has no family ties or employment opportunities in Mexico. *Statement from Counsel in Support of Form*

I-601 Application, dated June 1, 2004. Counsel indicated that the applicant's husband would be compelled to support two households if the applicant departs, one in Mexico and one in the United States. *Id.* Counsel asserted that the applicant's husband requires the financial contribution of the applicant, and that he may lose his house and require government support should the applicant depart. *Id.*

Counsel further contends that the district director applied an erroneous legal standard, and failed to fully consider the submitted evidence in light of current law. *Statement from Counsel on Form I-290B*, dated November 17, 2004.

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 suggestions of hardships that the applicant's son will endure if the applicant departs. However, hardship to the applicant's son is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant's son will bear significant consequences if separated from the applicant, or if he relocates with her, only hardship to the applicant's husband may be properly considered in this section 212(i) waiver proceeding.

Counsel asserts that the applicant's husband would endure economic hardship should the applicant be compelled to depart the United States. However, the record reflects that the applicant's husband was employed at a rate of \$11.69 per hour as of March 8, 2001, thus he is capable of earning income above the poverty line. Further, the applicant has not fully explained her husband's economic requirements or provided clear documentation of his monthly expenses. 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)). Thus, the AAO cannot assess whether his income is sufficient to meet his needs alone. While counsel contends that the applicant's husband may be compelled to sell his home without the applicant's financial contribution, the applicant has not established that her husband would be unable to make monthly mortgage payments without her assistance. Further, the applicant has not shown such an adjustment to her husband's living standards constitutes extreme hardship. Counsel claims that the applicant's husband would be compelled to support the applicant in Mexico, yet the record contains no indication or documentation to show that the applicant would be unable to secure employment in Mexico in order to meet her financial requirements. Accordingly, the applicant has not established that her husband would endure financial consequences that go beyond those ordinarily expected when a close family member is compelled to depart the United States.

The applicant and her husband express that they share a close relationship, and that the applicant provides companionship for her husband. The AAO recognizes that the applicant's husband will likely endure hardship as a result of separation from the applicant should he remain in the United States. However, their situation 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. The applicant has failed to establish that her husband would endure emotional hardship that goes beyond that normally expected when a family member is deemed inadmissible.

The applicant and her husband referenced the fact that her husband has health problems, namely diabetes and related complications. However, the record contains no documentation to support that the applicant's husband has diabetes, or that he requires assistance from the applicant or others. Again, 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. at 165.

It is noted that the applicant's husband may relocate to Mexico with the applicant if he chooses. The applicant has not fully explained the extent of her husband's experience with Mexico, yet counsel indicated that the applicant's husband does not speak Spanish and all of his family members are in the United States. The AAO acknowledges that residing in an unfamiliar country poses significant challenges, such as adapting to a new language and culture. It is evident that the applicant's husband would necessarily be required to relinquish his current employment. Yet, while counsel references that the applicant's husband would lose his retirement and benefits, the record contains no documentation to reflect the nature, value, or vestment status of any current benefits the applicant's husband enjoys. The applicant has not provided sufficient explanation or documentation to show that her husband would experience extreme hardship should he choose to relocate to Mexico to maintain family unity. However, as a U.S. citizen, the applicant's husband is not required to reside outside the United States as a result of the applicant's inadmissibility.

Counsel further contends that the district director applied an erroneous legal standard, and failed to fully consider the submitted evidence in light of current law. *Statement from Counsel on Form I-290B*, dated November 17, 2004. However, the district director provided a thorough account of the evidence submitted, an identification of the potential elements of hardship to the applicant's husband, and an accurate account of the applicable law. The district director's decision ultimately turned on the fact that the applicant failed to submit sufficient evidence to show extreme hardship. As discussed above, the AAO agrees. Counsel's assertions in this regard are not persuasive.

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.

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.