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

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FILE: [Redacted] Office: LOS ANGELES, CA Date: **OCT 03 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:



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 cursive script, 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 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 January 11, 1994. The applicant is married to 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 the assertions provided in the spouse's affidavit and the evidence in the record does not support a finding that the applicant's spouse would experience extreme hardship as a result of the applicant's removal. The application was denied accordingly. *Decision of the District Director*, dated November 29, 2004.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant being removed from the United States. Counsel also asserts that the director abused her discretion and committed legal error by failing to weigh and assess all relevant factors concerning the extreme hardship faced by the applicant's spouse in its totality. *Counsel's Appeal's Brief*, dated January 18, 2005.

The record indicates that on January 11, 1994 the applicant presented a fraudulent lawful permanent resident card (Form I-551) at the Yuma, AZ Port of Entry in an attempt to gain entry into the United States.

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) 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 himself 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. In her declaration, the applicant's spouse states that she would suffer extreme hardship as a result of relocating to Mexico. She states that her native country is Guatemala and that she has been residing in the United States since 1984. She states that it would be emotionally hard for her to adjust to a new country. *Spouse's Statement*, dated May 15, 2002. The AAO notes that the applicant's spouse's mother and daughters reside in Guatemala; she has no family ties to the United States. The applicant's spouse states that if she relocates to Mexico she will no longer be able to provide for her family because the economic conditions in Mexico are poor and she will not be able to find employment. The applicant submitted country condition reports to support his spouse's assertions. A Consular information sheet for Mexico dated July 25, 2004, states that Mexico experiences high crime rates, kidnapping of non-Mexicans and limited health services. The 2003 State Department Country Report for Mexico states that narcotics related violence; violence and discrimination against women; domestic and sexual violence; trafficking in persons; and police corruption were all problems. The report states that woman in the work force generally are paid less than their male counterparts, are concentrated in lower-paying occupations and that the minimum wage does not provide a decent standard of living for a worker and his family. Because of the applicant's long residence in the United States; lack of family ties to Mexico and the country conditions in Mexico in regards to the violence and discrimination against women, the AAO finds that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she needs her husband's emotional support and will be distraught from losing the love of her life. *Spouse's Declaration*, dated May 15, 2002. The record indicates that the spouse is a clerk helper in a food store, earning \$7.25 an hour. The applicant works in the same store and makes \$6.80 per hour. *Letters from Employer*, dated February 11, 2002. The applicant's spouse states that she supports her family, elderly parents and daughters in Guatemala and her and the applicant's combined income provides for her mother's treatment for stomach cancer. *Spouse's Declaration*, dated December 4, 2004. The applicant's spouse states that she fears she will not be able to pay for her mother's treatment if the applicant is removed and would be extremely psychologically affected if she could not provide for her mother's treatments. The applicant submitted a letter from University Hospital in Guatemala verifying his spouse's mother's treatments. The record includes receipts from money transfers to Guatemala in the amounts of \$300-\$750 per month. The applicant also submitted a 2003 country report for Guatemala, stating that more than 30% of the population depended on remittances to raise the family income above the poverty line. The applicant has established that his spouse supports her family in Guatemala and that her mother is undergoing treatments for cancer, but the applicant has not established that after the applicant's removal, it would be extreme hardship for the applicant's spouse to adjust her lifestyle and/or work schedule in order to continue to provide for her family. In addition, the applicant's spouse has not submitted any documentation to show the extent of the emotional effects the applicant's possible removal is

having on her. The AAO recognizes that the applicant will endure hardship as a result of being separated from the applicant, however, she has not established that this hardship rises to the level of extreme.

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 he 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.