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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: SEP 19 2006

IN RE:

APPLICATION:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [REDACTED] (Mrs. [REDACTED]), is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation. She is requesting a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her husband [REDACTED] (Mr. [REDACTED]) and four children, all of whom are U.S. citizens.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her "qualifying relative," her husband, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated December 3, 2004.

On appeal, counsel for the applicant asserts that Mr. [REDACTED] and Mrs. [REDACTED]'s father, both of whom are qualifying relatives, will suffer extreme hardship if Mrs. [REDACTED] is not granted a waiver of inadmissibility; and that the District Director erred (1) in failing to consider hardship to Mrs. [REDACTED] father, who is a lawful permanent resident; and (2) in failing to evaluate the hardship Mr. [REDACTED] would suffer if he were to go with his wife to Mexico. *Form I-290B, Notice of Appeal and Attached Brief*, dated December 29, 2004

Attachments to the above referenced Brief include copies of income tax records for 2003 (Form 1099) showing payments to three workers in the amounts of \$28,000, \$48,906, and \$30,654, respectively, from [REDACTED]; and numerous award certificates and school records for 2002-2004 for the [REDACTED] children. Also included in the record, as attachments to Mrs. [REDACTED] Form I-601, dated October 1, 2001, are (1) a declaration by Mr. [REDACTED] stating, *inter alia*, that his wife takes care of their children and is not employed; that he does not want to be separated from his wife or children; that educational and financial opportunities are lacking in Mexico; that his wife would not be able to find employment in Mexico and take care of the children at the same time; that he would not be able to support two households or take care of the children or run his business without his wife; that he would not be able to live in Mexico because his livelihood is in the United States; and that the children need both of their parents in the United States to **provide guidance**; (2) Mr. [REDACTED] naturalization certificate, the couple's marriage certificate and birth certificates for three children; (3) Permanent Resident Cards for [REDACTED] and [REDACTED] and (4) various financial records, including joint income tax returns from 1998-2000 showing gross receipts of \$92,609 from Mr. [REDACTED]'s trucking business in 2000 and listing Mrs. [REDACTED] as "housewife." Also in the record is a Washington Post article, dated March 10, 2000, reporting on the death of a government official and arrests of drug traffickers who had admitted to 14 killings; and a *Human Rights Report* for 1999 focusing mainly on violence in Chiapas. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that Mrs. [REDACTED] used a false document (I-94) to seek entry into the United States in 1997. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. Counsel does not contest this finding.

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.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 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, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. 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).

Hardship the applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Thus, hardship suffered by the applicant or the couple’s children will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant’s U.S. citizen husband and her lawful resident father.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse or father must be established in the event that they accompany her and reside in Mexico or in the event that they remain in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request.

There is insufficient evidence in the record for the AAO to make a hardship determination regarding Mrs. [REDACTED] father, [REDACTED]. The only relevant document in the record is his Permanent Resident Card, noting that he was born in 1939 and has been a permanent resident since 1989. Counsel states that he is retired and lives with Mr. and Mrs. [REDACTED] and forms part of their family unit. However, the only indication in the record of his residence notes an address different from that of the [REDACTED] family. *Biographic Information* (Form G-325A), dated December 13, 1997. There is no more recent information to show that he lives with or is in any way dependent on Mrs. [REDACTED] no evidence of income from pension or otherwise; no evidence of the extent of his family or community ties either in the United States or in Mexico; and no evidence of health or other factors relevant to a hardship determination. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

This decision, therefore, will address hardship to Mr. [REDACTED]. The record reflects that Mr. [REDACTED] has lived in the United States for over 20 years; he married Mrs. [REDACTED] in 1991 and they have four U.S. citizen children, ranging in age from approximately five to 14 years old. He is able to support his family and provide a good income for three employees with his trucking business, while his wife takes care of the house and children. Though counsel states that some of Mr. [REDACTED] siblings reside in the United States and others in Mexico, there is no evidence to support this statement nor any evidence of their immigration status in the United States; according to Form G-325A, *supra*, his parents live in Mexico.

In the event that Mr. [REDACTED] chooses to move to Mexico to avoid his and his children's separation from his wife, or if he decides to remain in the United States separated from his wife, clearly Mr. [REDACTED] will face difficulties, but the hardships he would face are the common result of removal or inadmissibility. He has failed to show that they would be extreme.

Mr. [REDACTED] states that he depends on his wife to care for their children and that he does not want to be separated from her or the children. He also states that he cannot live in Mexico with his wife and children

because their livelihood is in the United States. Though the BIA has generally not found financial hardship alone to amount to extreme hardship (*Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted)), it is one of the relevant factors to be considered in the analysis of extreme hardship. In this case, given the fact that Mr. [REDACTED] is responsible for supporting his family of five, and that Mrs. [REDACTED] has not worked outside the home for many years, giving up his source of income and his business in the United States would represent a dramatic change for him and his family if he chose to relocate with his wife to Mexico. He has failed to provide evidence, however, that he would not be able to use his skills, both as a driver and as a businessman, to support his family in Mexico; nor has he provided evidence that his wife would be unable to work there. Information in the record on country conditions in Mexico do not address this issue, as the documents submitted focus on the arrests of drug traffickers, violence in Chiapas and human rights violations. 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)). Having lived the last 20 years in the United States, Mr. [REDACTED] would also give up the social ties he has built up in his community, but the record indicates that he would also have some community support in Mexico, as his parents reside there, as do some of his siblings.

If his wife were forced to relocate to Mexico, and Mr. [REDACTED] remained in the United States with their children, he would be able to continue to manage his business and maintain his and his children's ties to family and community in the United States, thus avoiding the difficulties associated with a move to Mexico. He would need to make alternate arrangements to ensure care for his children and make other lifestyle changes necessitated in the absence of his wife. If the children were to accompany his wife to Mexico while he remained in the United States, he would be faced with the difficult emotional consequences of this separation. These are hardships normally associated with family separation, and there is nothing in the record to show additional hardship Mr. [REDACTED] would suffer if the applicant were denied a waiver of inadmissibility. It is clear that if Mr. [REDACTED] chooses to remain in the United States, he will suffer emotionally and personally because he and his children, if they remain with him, do not have the companionship and care of Mrs. [REDACTED]. His situation, however, based on the record, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level 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 Mr. [REDACTED] faces extreme hardship if his wife is refused admission, whether he chooses to relocate with her or remain in the United States. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility 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 Mr. [REDACTED] deportation would cause to his spouse and children). In addition *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *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.

The record in this case does not contain sufficient evidence to show that the hardship Mr. [REDACTED] will endure if his wife is not granted a waiver of inadmissibility rises beyond the common results of removal or

inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under Section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 rests 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.