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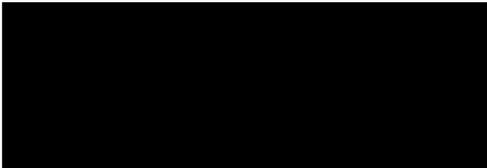
U.S. Department of Homeland Security  
20 Mass Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: APR 17 2007

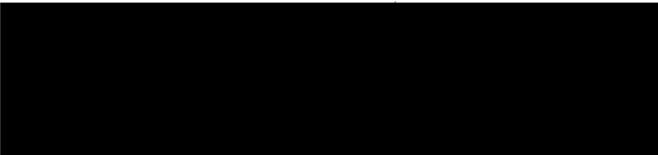
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 Officer in Charge, Ciudad Juarez, Mexico, 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 found, by a U.S. consular officer 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 used a fraudulent immigration document to obtain employment. In addition, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant had accrued unlawful presence in excess of one year but had failed to establish that his qualifying relative would undergo extreme hardship through his continued inadmissibility. The application was denied accordingly. *Decision of the Officer in Charge*, dated August 3, 2005.

On appeal, counsel asserts that the Officer in Charge erred in his decision that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because he obtained employment using a fraudulent resident card. In addition, counsel states that the applicant demonstrated that his spouse would suffer extreme hardship if the waiver application is denied. *Counsel's Brief*, dated December 26, 2004.

The record indicates that the applicant used a fraudulent lawful resident stamp (I-551) to obtain employment in 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.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act, stating in part: (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case. Consular or Bureau officers "shall" warn the alien being interviewed of the statutory penalty.

In the applicant's case, the record does not show that the applicant practiced his misrepresentation on an official of the U.S. government or that he used the fraudulent document in an attempt to procure admission or any other benefit under the Act. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the decision of the officer in charge indicated that the applicant had been refused an immigrant visa under section 212(a)(6)(C)(i) of the Act. The officer in charge did not, however, reach this conclusion, but found the applicant's admissibility to be related to section 212(a)(9)(B)(i)(II) of the Act. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant entered the United States without inspection in April 1998. The applicant did not depart the United States until February 2005. Therefore, the applicant accrued unlawful presence from April 1998, the date he entered the United States, until February 2005, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his February 2005 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences or his children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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

alien 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. 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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that the documentation submitted to show the extreme hardship suffered by the applicant’s spouse consists of Counsel’s Brief and the Spouse’s Declaration. In his brief, counsel contends that the distress felt by the applicant’s spouse following the death of her first child, the close relationship between her second child and the applicant and her father’s disability, as well as other hardship set forth in her declaration, constitute extreme hardship. However, without documentary evidence to support the claims, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported 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). The applicant’s spouse’s declaration, dated January 21, 2005, was made prior to the applicant’s departure from the United States. In it, she states that she was born in the United States and that her parents and three siblings also all live in the United States. She states that her first and last trip to Mexico was in 1997, when she went to visit her grandmother. The applicant’s spouse explains that she and the applicant live with her parents and her two younger siblings. She does not want to be separated from her family nor does she want to be separated from

the applicant. She states that they live with her family to help with the bills, but that she and the applicant hope to buy a house in a few years. She states that without the applicant's income she would not be able to fulfill her dream of purchasing a home. The applicant's spouse also expresses her concerns about access to health care in Mexico and her ability to obtain employment in Mexico. The record, however, offers no evidence that supports the concerns expressed by the applicant's spouse with regard to employment and health care in Mexico or establishes that such concerns constitute extreme hardship. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. See *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)). Finally, the applicant's spouse asserts that she would not want to relocate her child to Mexico and take her away from all the opportunities available to her in the United States. The AAO notes that the hardship the applicant's child would suffer as a result of the applicant's inadmissibility is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. In the present case, the applicant has failed to establish a connection between any hardship his child may experience and the hardship that this would cause his spouse. Moreover, he has no documentation to establish the reduced opportunities for his child in Mexico.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record does not reflect that the hardship she would experience rises to the level of extreme hardship.

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.