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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: SAN FRANCISCO, CA

Date:

AUG 29 2007

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:

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, San Francisco, California, 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. The record indicates that the applicant testified under oath at her adjustment of status interview that on three separate occasions, in 1995, 1996 and 1997, the applicant had used a Legal Permanent Residence Card belonging to someone else to enter the United States. The applicant was thus 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 procured entry into the United States 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 reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of this assertion, counsel submits a brief, dated May 13, 2005 and two letters from physicians regarding the applicant's spouse's medical conditions. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 of the bar to admission resulting from a 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 applicant 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 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board 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.

This matter arises in the San Francisco 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.

To begin, counsel asserts that the applicant's spouse suffers from a number of medical conditions, including diabetes. [REDACTED] confirms that the applicant's spouse has been diagnosed with "...Diabetes, Type 2, with microalbuminuria, Obesity and History of migraine headache..." *Letter from* [REDACTED] M.D., dated May 9, 2005.

[REDACTED] states that the applicant's spouse "...has been my patient since March 18, 1998. The patient has had diabetes since 1997...The patient has been treated monthly for diabetic care which includes examination, blood glucose and urine testing, nutritional counseling and medication monitoring. Recently, patient was treated for a monilial infection which is due to his diabetes. The patient is also treated for migraine headaches caused by his diabetic medications. The patient has borderline hypertension and morbid obesity (weight 244)...Salvador [the applicant's spouse] needs continuous treatment (life-long). His blood glucose is not in good control...His health insurance benefits are through his employment. If he leaves his job, there will be no health insurance. His medical care is very expensive. This includes his doctors visits, monthly lab testing and daily medications...could not receive adequate medical attention for his condition in Mexico because of the financial burden it would impose on him...Having diabetes increases the risk for many different health problems and some of the major complications that can occur when diabetes is poorly controlled include frequent infections, vision and other eye problems, nerve damage, circulatory problems and heart disease..." *Letter from* [REDACTED], dated December 3, 2002.

further states that the applicant's spouse has been his patient for "...the past seven years. I have treated him for foot complications related to his diabetes...It is my opinion because of [the applicant's spouse's] diabetes and foot complications that he does require assistance in care and evaluation of his feet..." Letter from , dated May 9, 2005.

The evidence provided does not establish that the applicant's spouse would suffer extreme medical hardship were he to accompany the applicant to Mexico. No documentation has been provided that evidences that medical care in Mexico for the applicant's spouse's conditions would be cost-prohibitive. Nor has any evidence been provided to show that the applicant's medical situation will worsen to a greater degree while in Mexico, such as documentation from medical experts in the field, confirming that Diabetes and related conditions cannot be treated properly in Mexico. Furthermore, counsel does not explain why the applicant will be unable to work in Mexico, thereby assisting with the financial costs of maintaining the household and providing the family with the capability of obtaining adequate medical coverage while in Mexico. Finally, according to the record, the applicant's spouse has been employed as a full-time foreman since 1998. Despite his medical conditions, he is clearly able to work and it has not been established that the applicant's spouse would be unable to find a similar position in Mexico, with health coverage. 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)).

In addition, counsel contends that the applicant's spouse would suffer extreme hardship if he remained in the United States after the applicant was removed. states that the applicant's spouse "...does require assistance in care and evaluation of his feet." *Id.* at 1. The applicant's spouse mentions in his affidavit "...My immediate family resides in the United States. My United States citizen, father lives in Oakland, California, the city where I now reside and where I was born...My siblings also reside in Oakland, California. Four out of five of my siblings are also United States citizens the five is a lawful permanent resident..." *Affidavit of*, dated December 12, 2002. No explanation has been provided for why the applicant's spouse's other relatives, including his father and five siblings who reside legally in Oakland, California, where the applicant's spouse resides, are unable to assist the applicant's spouse should the need arise. Although the applicant's spouse may need to make other arrangements with respect to his medical care should the applicant be removed, it has not been shown that such alternate arrangements would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.