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U.S. Citizenship
and Immigration
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[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona 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 applicant's spouse, a naturalized U.S. citizen, filed a Form I-130, Petition for Alien Relative, on behalf of the applicant on April 27, 2001. It was approved on June 25, 2002. The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on November 29, 2002. On October 5, 2004, the applicant appeared for the adjustment interview. At that time, the applicant admitted that on February 14, 1995, she applied for a nonimmigrant visa at the U.S. Consulate in Ciudad Juarez, Mexico and submitted a fraudulent letter of employment and pay check stubs in order to prove economic solvency; these documents had been purchased and presented in order to obtain a visa. On August 2, 2005, the applicant was issued a Notice of Intent to Deny as it had been determined that the applicant was inadmissible 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 Notice requested a Form I-601, Application for Waiver of Grounds of Excludability (Form I-601).

On October 28, 2005, the applicant submitted a Form I-601 and supporting documentation. 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 and three children.

The acting district director found that the applicant was inadmissible for misrepresentation and concluded that extreme hardship to a qualifying relative had not been established. The Form I-601 was denied accordingly. *Decision of the Acting District Director*, dated November 9, 2005.

On December 9, 2005, counsel for the applicant filed the Form I-290B and provided a brief reason for the appeal on said form. Counsel also indicated on the Form I-290B that they would need 90 days to submit a brief and/or evidence to the AAO in support of the appeal. On July 10, 2007, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to AAO, along with evidence that it was originally filed with the AAO within the 90 day period requested, within five business days. No information was sent by counsel in response to this fax and thus, the record is considered complete.

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 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, a naturalized U.S. citizen. 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 Phoenix 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.

Counsel states on the Form I-290B that the basis for the appeal is that the "...District Director erred by placing unfounded reliance on the scientific pedigree of the expert assessing the psychological impact confronting the qualifying relative...The expert is a 'Ph.D' and is licensed to perform psychological assessments of patients. No where in custom, practice or protocol is an individual to whom conferral of a Ph.D. is addressed as 'Mr.' This attempt to minimize the expert's qualifications without any basis other than a sweeping claim that he is not a 'licensed physician' impugns the legitimacy of practitioners in the psychology profession." *Statement by Counsel on the Form I-290B*, dated December 9, 2005.

The record indicates that counsel provided, with the Form I-601, an undated [REDACTED] from [REDACTED] Licensed Marriage and Family Counselor and Certified School Psychologist,

based on an interview with the applicant and her spouse. [REDACTED] concluded that the applicant's spouse "...was a loving and devoted husband and father. He was a hard working and committed individual with limited developed cognitive and professional talents that forces him into subsistence living. All these drawbacks would be seriously activated living in Mexico. After struggling to make his dreams come true in the United States, it would be undoubtedly difficult to stand by and see his children and wife fall into hardship..." *Behavioral Health Evaluation from [REDACTED]*.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation appears to be based on a single interview between the applicant's spouse and the counselor/psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the applicant's spouse's limited cognitive potential. Moreover, the conclusions reached in the submitted evaluation, being based on an apparent single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of 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.

The applicant's spouse references in his declaration that the applicant "...is not only a great wife, but [a] great mother as well. She takes great care of our three children...I cannot give our children the support and attention she gives them. Everyday after school she cooks dinner meanwhile she calls the children to the table...I then help them with any questions they might have regarding their homework. Right before bedtime she gives us something light to eat and our children conclude the day...There are only a few of the things she does for us..." *Declaration from [REDACTED]* Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. As such, while the applicant's spouse may need to make other arrangements with respect to the children's continued care and the upkeep of the household were the applicant removed from the United States, counsel has not established that any new arrangements for the psychological, emotional and financial care of the children and the continued daily maintenance of the household would cause extreme hardship to the applicant's spouse.

Counsel provides a Projected Statement of Changes in Revenues and Expenditures were the applicant to be removed from the United States, prepared by [REDACTED], Certified Public Accountant; counsel concludes that there would be a projected financial loss of nearly \$5,000 per month for the applicant's spouse. *Memorandum in Support of the I-601 Waiver Requested*, dated October 28, 2005. However, the record is silent in terms of why the applicant herself is not able to obtain employment in Mexico and assist with the financial costs of maintaining two households. In addition, no documentation has been provided to substantiate the figures provided in [REDACTED]'s projected statement. 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)).

Counsel further states that were the applicant's spouse to accompany the applicant to Mexico, "...a bleak financial future will be [in] store for him." *Id.* at 7. The applicant's spouse was born in Mexico and is currently employed in the construction industry as a general laborer; the record does not establish that he would have difficulty finding employment in Mexico or that the employment situation in Mexico will cause extreme hardship to him, financially, emotionally or psychologically. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Counsel also references the high level of crime and violence in Mexico. *Id.* at 7. The information provided by counsel with respect to Mexico's country conditions is very general in nature. It has not been established that the applicant's spouse specifically would suffer extreme hardship in Mexico.

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, and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico with the applicant were she removed. 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.