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FILE: [REDACTED] Office: CHICAGO, IL Date: JUN 21 2007

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:  
[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.

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, Chicago, Illinois, 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 sought to procure admission into the United States through fraud or willful misrepresentation on July 24, 1999. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The AAO notes that the applicant was also found to be inadmissible to the United States under section 212(a)(9)(C) of the Act for being unlawfully present in the United States after being removed from the United States under section 235 (b)(1) of the Act. The district director concluded that the applicant was not eligible to file the Form I-212, Application to Reapply for Admission into the United States after Deportation or Removal, as less than ten years had passed since her last departure. The issue of the applicant's inadmissibility under section 212(a)(9)(C) of the Act is not, however, before the AAO. Accordingly, the AAO will limit its consideration of the record to the applicant's eligibility for a waiver of inadmissibility under section 212(i) of the Act.

In his decision, the district director concluded that the applicant had failed to submit a statement to explain the general hardship her U.S. citizen spouse would suffer as a result of her inadmissibility. The district director then found that the applicant's waiver must be denied. *Decision of the District Director*, dated December 15, 2004.

On appeal, counsel asserts that the applicant was the victim of a notary public who did not properly file her waiver application and that if provided effective assistance she would have been able to show extreme hardship to her U.S. citizen spouse. Counsel further explains that the applicant's spouse owns a home and has siblings living in the United States. He also indicates that the applicant has two U.S. citizen children for whom she cares, and that one of her children requires speech therapy and would not be able to receive this treatment in Mexico. *Counsel's Brief*, filed January 14, 2005.

The record indicates that on August 30, 2004, the applicant stated under oath that on July 24, 1999 she presented a fraudulent resident alien card (Form I-551) 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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 he resides in Mexico or in the event that he resides in the United States, as he 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.

On appeal counsel submits documentation from the applicant's son's school showing that he has developmental delay and speech impairment. While the documents show that the child is receiving therapy from his school, counsel provides no evidence to support his assertion that the applicant's son would have difficulty receiving this kind of assistance in Mexico. Neither does he establish that this lack of assistance would cause hardship to the child's father, the only qualifying relative in this proceeding. As stated above, hardship the applicant's children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. Counsel also submits no documentation to show that the applicant's spouse owns a home in the United States. Without documentary evidence to support the claims made, 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). The minimal assertions made by counsel in his brief do not establish that the applicant's spouse would suffer extreme hardship and counsel submits no documentation to support his assertions, with the exception of the applicant's son receiving speech therapy.

The record also contains no evidence that separation from the applicant would create extreme hardship for her spouse. Although counsel reports on appeal that the applicant cares for the couple's children as her spouse works full-time, he does not indicate or document how the removal of the applicant would affect this aspect of the applicant's spouse's life. Thus, the AAO finds that the record does not establish that the applicant's spouse would suffer extreme hardship in the event that he relocates to Mexico or in the event that he resides in the United States without the applicant.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

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 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 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.