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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, ARIZONA

Date:

APR 22 2008

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,  
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the 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 who last entered the United States without inspection in February 1994. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. She 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 spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director*, dated April 12, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) failed to thoroughly analyze the facts and evidence in the case, including evidence of extreme financial and emotional hardship to the applicant’s husband if the applicant is removed from the United States. Specifically, counsel states that CIS erroneously disregarded letters that were key evidence of hardship because they were not notarized or because they were in English despite the fact that the writer speaks only Spanish. *See Brief in Support of Appeal* at 4. Counsel asserts that the letters were transcribed, rather than written in Spanish and submitted with an English translation, and that this method is acceptable. Counsel further states that the evidence on the record establishes that the applicant’s husband would suffer extreme hardship if the applicant is removed from the United States because he has resided in the United States his entire adult life and has strong family ties here, would be unable to find work in Mexico, would not have access to adequate medical care there, and would lose his permanent resident status if he relocated there. *See Brief* at 5-8. Counsel also asserts that if the applicant’s husband were to remain in the United States, he would suffer extreme hardship from being separated from his wife of twenty-five years. *See Brief* at 9.

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 [Secretary] may, in the discretion of the [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 [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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a 39 year-old native and citizen of Mexico who has resided in the United States since 1989 and last entered the United States without inspection in February 1994. She had previously attempted to enter the United States in December 1993 using a fraudulent permanent resident card and was arrested by the U.S. Border Patrol and returned to Mexico. Her husband, a Lawful Permanent Resident, is a 41 year-old native and citizen of Mexico who has resided in the United States since 1989. They have been married since 1983 and have three U.S. Citizen sons. Counsel submitted documentation indicating that both the applicant and her husband are employed and they own their home in Phoenix, Arizona.

The district director concluded that the applicant had failed to demonstrate that her husband would suffer extreme hardship if she were removed from the United States. He found that although he might incur additional financial responsibilities if the applicant is removed, this amounts to the type of hardship commonly resulting from a spouse's relocation to another country. Further, the district director stated that no evidence was submitted to demonstrate that the applicant's spouse has any major health problems that would require the applicant's presence in the United States, or that he would suffer a severe hardship if he were to accompany the applicant abroad. See *decision of District Director*, dated April 12, 2006, at 2. The district

director also concluded that the applicant's family and property ties were "after-acquired equities" that were not to be accorded great weight in the exercise of discretion. *See decision of District Director* at 3-4.

Counsel asserts that CIS did not consider the economic and social conditions in Mexico, and that Mexico "is perpetually in economic crisis and . . . cannot provide employment to its own citizens much less non-citizens like [redacted] children." *Brief* at 6-7. Counsel states that the applicant and her husband would be unable to find work in Mexico and the applicant "would join the masses of impoverished Mexican citizens who compete for subsistence wages." *Brief* at 8. Counsel refers to the U.S. State Department *Country Condition Report for Mexico* from 2000 to support these assertions, but did not submit any evidence on the economic situation in Mexico. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). Further, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel also asserts that if the applicant's husband were to relocate to Mexico with the applicant, he would suffer extreme hardship because he would be separated from his immediate family in the United States, where he has lived his entire adult life. *See Brief in Support of Appeal* at 5. Counsel further states that if he relocates to Mexico with the applicant, the applicant's husband would have to abandon his lawful permanent resident status and lose "a lifetime of work and progress in the U.S." *Brief* at 9. Although counsel asserts that the applicant's husband has strong family ties in the United States and that "there is nothing in the record to reflect the existence of close family ties in Mexico," no evidence was submitted indicating which family members reside in the United States or the emotional effects of any separation that would result. The AAO notes that although counsel states that "his entire immediate family including most of his children are in the United States," counsel does not assert that the applicant and her husband would leave their three U.S. Citizen children in the United States if they relocated to Mexico. Counsel does not specify which other members of the qualifying relative's family reside in the United States.

Counsel states that the applicant and her children, who are guaranteed basic health service in the United States from private or state programs, would be unable to receive even basic medical attention in Mexico because "Mexico's health system is virtually non-existent for most families because they simply cannot afford to see a doctor or visit a hospital." *Brief* at 8. There is no evidence on the record concerning the applicant's medical insurance in the United States or access to health care in Mexico, and no evidence that she suffers from diabetes as counsel asserts. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena, supra; Matter of Laureano, supra; Matter of Ramirez-Sanchez, supra.* Further, there is no evidence that the applicant's husband or their children suffer from any medical condition that would contribute to the hardship experienced by the applicant's husband if they relocated to Mexico.

Further, the evidence does not establish that any emotional hardship the applicant's husband would suffer if the applicant is removed would be more serious than the type of hardship an individual would normally suffer when faced with the prospect of separation from his spouse. Although the depth of his concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or

exclusion. The prospect of separation always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

The emotional and financial hardship the applicant’s spouse would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required under section 212(i) of the Act.

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.