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U.S. Citizenship  
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[Redacted]

FILE: [Redacted] Office: PHOENIX, AZ Date: FEB 29 2008

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 cursive script, appearing to read "Robert P. Wiemann".

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 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 attempted to procure admission into the United States by fraud or willful misrepresentation on November 6, 1988. The applicant is married to a lawful permanent resident and has four U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

On September 27, 2005, the acting district director notified the applicant of the Service's intent to deny her Form I-485, Application to Register Permanent Residence or Adjust Status and granted the applicant the opportunity to submit documentation establishing that she is not inadmissible to the United States or to file a waiver application. The district director gave the applicant 87 days, or until December 23, 2005 to file the additional documentation. *Notice of Intent to Deny*, dated September 27, 2005.

On December 23, 2005, the applicant submitted a Form I-601 waiver application, which the acting district director determined could not be considered because the applicant had failed to state specific grounds of inadmissibility on the application. He denied the application accordingly. *Decision of the Acting District Director*, dated January 25, 2006.

On appeal, counsel asserts that the fact that the applicant falsely claimed to be a U.S. citizen was specifically noted and discussed in her brief, which was submitted with the applicant's waiver application. She states that the district director did not consider the documentation submitted with the initial waiver application. Counsel resubmits the documentation submitted on December 23, 2005. *Form I-290B*, dated February 24, 2006. The AAO notes that the entire record will be considered on appeal.

The record indicates that on November 6, 1988, the applicant falsely claimed to be a U.S. citizen in an attempt to gain entry into the United States. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver under section 212(a)(6)(C)(i) of the Act.

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 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.

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 applicant 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.

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).

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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite respondent's testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse. *See also Babai v. INS*, 985 F.2d 252 (6<sup>th</sup> Cir. 1993) (failure to consider hardship to U.S. citizen child if he remained in the United States is reversible error).

Separation of family will therefore be given appropriate weight 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 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.

Counsel states that the applicant's spouse will suffer extreme psychological hardship and financial hardship if the applicant is removed from the United States. Counsel also states that the applicant and her spouse have an unusually strong and loving relationship. *Counsel's Brief*, dated December 14, 2005. The record indicates that the applicant and her spouse have been married for 21 years and have four children. Counsel states that the applicant's spouse would not be able to properly take care of his three minor children and handle the responsibilities of their household without the applicant. Counsel states that the applicant's spouse fears that he will struggle with grief and loss if his wife is removed including having to deal with the emotions of his children. *Id.*

Counsel submits an evaluation examining the effect the applicant's removal will have on her U.S. citizen children. [REDACTED], an educational administrator who has experience in evaluating academic Spanish and the effects of removal to Mexico on U.S. citizen children, and [REDACTED] a high school instructor in psychology and African-American studies prepared the evaluation. *Resume of [REDACTED] Evaluation*, undated. The evaluators conclude that the applicant's children will suffer severe and far-reaching emotional and academic hardships due to the stress of life without their mother. *Evaluation*, undated. They also conclude that, if the children accompany the applicant to Mexico, they will be denied a quality education and, due to their lack of academic Spanish language fluency, they will experience a significant grade level retrogression, which will effectively terminate their academic careers. *Id.* Although the AAO will accept the evaluation's conclusions regarding the educational impacts of the applicant's inadmissibility on her children, it does not find the record to establish either of the evaluators as qualified to assess how the applicant's inadmissibility will affect the children's emotional or psychological health. Moreover, the AAO notes that, 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. The evaluation does not establish a connection between the academic hardship that will be experienced by the applicant's children and the suffering of the applicant's spouse.

On appeal, counsel contends that the harm suffered by the applicant's children will have an indirect effect on her spouse and should not be disregarded. *Counsel's Brief*, dated December 14, 2005. To identify that harm, she points to the evaluation prepared by [REDACTED] and [REDACTED] and asserts that the evaluators conclude that the applicant's inadmissibility will cause the complete disruption and disintegration of her family. However, as just noted, the AAO finds the evaluation to draw no connections between the academic hardship to be suffered by the applicant's children and that experienced by her spouse. Further, the AAO does not find the evaluation prepared by [REDACTED] and [REDACTED] to draw the conclusion that the applicant's inadmissibility will result in the complete disintegration of her family. 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 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).

Counsel also states that the applicant's spouse will suffer financially if he is separated from the applicant and if he relocates to Mexico to be with the applicant. *Counsel's Brief*, dated December 14, 2005. Counsel states that the applicant's spouse cannot relocate to Mexico as a 40 year old who has lived in the United States for over 20 years and has expertise only in the American workforce. Counsel asserts that the applicant's spouse will have to accept employment outside of his field and will not be able to financially support his family. *Id.* Although counsel's brief indicates that materials on Mexican economic and country conditions have been submitted to support these claims, no country conditions information is included in the record. Accordingly, the record does not establish that if the applicant's spouse moves to Mexico, he will suffer extreme financial hardship. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Id.*

Counsel also asserts that the applicant's spouse would suffer extreme financial hardship if the applicant were returned to Mexico and he remained in the United States. She contends that he would not be capable of supporting his family in Mexico while maintaining his residence in the United States. In their evaluation, Ms. [REDACTED] and [REDACTED] state that the applicant has only a sixth grade education and that upon relocation to Mexico she will have to return to farm work and will earn only \$2 per day. They assert that the applicant is the sole support of her family in the United States because the applicant's spouse is currently unemployed. The record does not, however, support these claims. No country conditions information has been provided to establish that the applicant would be unable to find sufficient employment in Mexico to support herself, thus requiring total financial support from her spouse, or that she would be unable to earn more than \$2 per day. Further, the record is not clear as to whether the applicant is currently the sole provider for her family. The AAO notes that the record includes 2004 Wage and Tax Statements showing the applicant's spouse as being employed. Therefore, the record does not contain the evidence necessary to demonstrate that the spouse will face extreme financial hardship if he remains in the United States following the applicant's removal to Mexico.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the current record does not establish that the applicant's spouse's hardship will rise 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 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.