



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

JAN 31 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.

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 April 10, 1997. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director concluded that the applicant failed to show that his qualifying relative would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the Acting District Director*, dated October 31, 2005.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship in the form of ongoing severe mental, emotional, legal, social, financial and social constraints as a result of the applicant's inadmissibility. *Counsel's Brief*, dated November 28, 2005.

The record indicates that on April 10, 1997 the applicant applied for a nonimmigrant visa at the United States Consulate in Guadalajara, Mexico. Inspection of the documents submitted with the applicant's visa application revealed that the employment, social security, bank and tax information was fraudulent. The applicant was found to be inadmissible for attempting to procure admission to the United States by fraud. *Consular Refusal Worksheet, Consulate General of the United States, Guadalajara, Jalisco, Mexico*, dated April 30, 1997.

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 his 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 she resides in Mexico or in the event that she resides in the United States, as she 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 emotional, mental and economic hardship as a result of the applicant’s inadmissibility. *Counsel’s Brief*, dated November 28, 2005. Counsel states that the applicant and his spouse have been married for seven years and separation would be unbearable for her. *Counsel’s Brief*, dated November 28, 2005. In addition, the possibility of relocating to Mexico is daunting for

the applicant's spouse because she does not speak Spanish and she has no family in Mexico. Moreover, counsel states that the applicant's mental health and physical well-being are threatened by the applicant's inadmissibility. *Counsel's Brief*, dated November 28, 2005. The applicant's spouse states that the applicant saved her from going down a self-destructive path. *Spouse's Statement*, dated November 28, 2005. She states that in the past she drank heavily and dated men who took drugs and were disrespectful. She also states that because of the applicant she is able to work less and spend time with her children. She states that her self-worth is connected to being a good parent and does not want someone else raising her children. *Id.*

Counsel submits a psychological evaluation from [REDACTED] a licensed psychologist. Dr. [REDACTED] states that she interviewed the applicant on November 18, 2005, for one hour, at the request of the applicant's counsel. *Psychological Examination*, dated November 29, 2005. [REDACTED] found the applicant's spouse to be friendly, socially responsive, gentle, cooperative and generally well-rounded. She states that during the interview the applicant's spouse was clearly distraught, anxious, tearful and depressed from what she has been through and because of her anticipation of the future. She states that the applicant's spouse reports current and past suicidal ideation without intent. [REDACTED] finds that the applicant's spouse meets all the major criteria for a clinical diagnosis of major depressive disorder that is recurrent and severe. She states that the applicant's spouse is experiencing: depressed mood, anhedonia, primary insomnia, suicidal ideation without intent, irritability, anxiety, emotional lability, tearfulness, hopelessness, impaired decision-making, impaired concentration, anergia, weight gain of twenty pounds, impaired libido, and social withdrawal. [REDACTED] states further that the applicant's spouse experiences occasional bouts of subclinical panic attacks. [REDACTED] concludes that the applicant's spouse's future mental health will be put at a significant risk if the applicant is removed and the applicant's spouse relocates to Mexico. She states that the factors contributing to this risk are: lack of familial support, career constraints, mental health access, the language barrier, financial constraints, marital strain and parenting strain. *Id.*

If the applicant's spouse remains in the United States, [REDACTED] finds that she will be cut off from her means of social and financial support; that her career will not sustain her and allow her to keep her home; that she will need mental health services; that she and her children will be forced onto welfare; and that she and the applicant will likely divorce.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single one-hour interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the symptoms suffered by the applicant's spouse. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship.

Counsel states that the applicant's spouse will suffer economically if the applicant is removed because in the United States she would have to find employment that provides a higher income than what she currently earns. If she relocates to Mexico, counsel asserts, the applicant's spouse will not be able to find employment. *Counsel's Brief*, dated November 28, 2005. Counsel states that Mexico has an unemployment rate of 30 percent and underemployment of 25 percent according to the World Bank and that in Mexico the applicant would be attempting a "nearly futile job search." *Id.* The AAO notes that no documentation was submitted to support these statements regarding employment conditions 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). Counsel also asserts that the applicant's spouse would have to support two households upon the applicant's departure from the United States. Counsel states that the applicant's spouse currently works seasonally as a cook for private parties and during the day she operates a kindergarten from her home. Counsel asserts that the applicant, who is employed as a landscaper, is the primary provider for the family. *Id.* The applicant's spouse states that she would have to leave her seasonal employment if the applicant was removed because she would not be able to find a babysitter to care for her children during the evening hours. *Spouse's Statement*, dated November 28, 2005. She fears that if the applicant is removed she will have to place her children in after school care because she will have to work long hours. She also states that moving to Mexico is not an option for her because she and her children have never visited Mexico and all of her family lives in Oregon. *Id.* The AAO notes that the record includes a letter from the applicant's minister at the Canyon Church of Christ, [REDACTED], who states that breaking up the applicant's family will cause trauma, especially to the applicant's spouse. He further finds that relocation to Mexico would be hard for the applicant's spouse creating both financial and emotional trauma. *Letter from Minister at Canyon Church*, dated November 28, 2005. [REDACTED] states that the applicant is a conscientious, dedicated and industrious person. *Id.* The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's removal, however, it does not find her situation, as demonstrated by the record, to 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 he 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.