



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

*H2*

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

**JUL 01 2008**

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 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 record indicates that on March 25, 1988, the applicant made a false claim to U.S. citizenship in order to attempt to gain entry in the United States. The applicant was thus 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and 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 lawful permanent resident spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the District Director*, dated May 5, 2006.

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.

On appeal, counsel submitted a brief, dated July 1, 2006. In said brief, counsel first asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C) of the Act. As stated by counsel,

...we deny that there was an actual false claim to United States citizenship. The applicant did not claim to be a United States citizen. This incident happened almost 20 years ago in 1988, when Mrs. [REDACTED] [the applicant] was only 18 years old<sup>1</sup> and was being brought to the United States to take care of her sister-in-law's children. Mrs. [REDACTED] was told that she only had to say that her name was [REDACTED]. At no time did Mrs. [REDACTED] present any false documents as the person who smuggled her in talked to the officer at the port of entry. Mrs. [REDACTED] knew she was entering the United States without documents but did not know that she was claiming to be a United States citizen. She never said anything to the officer until they put her in secondary inspection and at that point, stated that she had no documents. She never lied to the officer at the port of entry and never presented anything to the officer....Mrs. [REDACTED] never claimed to be United States citizen and never presented any documentation stating that she was a United States citizen. If she did anything it was change her name to [REDACTED]. It is our position

---

<sup>1</sup> Counsel makes numerous references to the fact that the applicant was only 18 years old at the time that she attempted entry to the United States in March 1988 by claiming U.S. citizenship. However, pursuant to the applicant's birth certificate, she was born on March 8, 1966. As such, despite counsel's statements to the contrary, the applicant was over 22 years old at the time she attempted entry by claiming to be a U.S. citizen, as further discussed below.

that such conduct does not meet the elements required for a finding of fraud or willfully misrepresenting a material fact....

*Brief in Support of Appeal*, dated July 1, 2006.

To begin, the AAO notes that counsel has not provided any corroborating documentation to support her assertions, such as a sworn affidavit from the applicant herself, attesting to the veracity of counsel's statements. Moreover, pursuant to the record, there is no indication that counsel was a witness to the above-referenced events that occurred in March 1988; as such, counsel is not in a position to outline what exactly happened on the day in question without supporting, corroborating documentation. 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).

Finally, the record does not support the attestations made by counsel. As indicated on the Form I-213, Record of Deportable Alien,

...Subject [the applicant] was a passenger in a vehicle applying for admission....The driver presented her I-688 legalization card and the passenger [the applicant] declared her citizenship to be that of the U.S. and presented an Arizona birth certificate in the name of [REDACTED]...birth place in Phoenix, Arizona. The subject stated that she had obtained the document friend of hers....

*See Form I-213, Record of Deportable Alien*, dated March 25, 1988.

Moreover, on the Form G-329, Documented False Claim to Citizenship, it states as follows:

Subject [the applicant] was applying for admission as a passenger in a car....Subject made a declaration as being a citizen of the U.S. She further presented the above document [an Arizona birth certificate] as proof of her claim. Her sister in law corroborated her story by stating 'yes she is a U.S. citizen and that she was born in Phoenix, AZ.' They [the applicant and her sister-in-law] both broke to subject true citizenship while being interviewed in INS secondary....

*See Form G-329, Documented False Claim to Citizenship*, dated March 25, 1988.

Despite counsel's assertions to the contrary, the record indicates that the applicant made a proactive attempt to enter the United States in March 1988 by claiming U.S. citizenship and presenting, to a port of entry office, an Arizona birth certificate that did not belong to her. As such, the AAO concludes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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...

As stated above, Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 first states that the applicant’s spouse, a lawful permanent resident, will suffer extreme hardship if the applicant relocates abroad due to the fact that he will have to care for their four children. As stated by counsel,

...Mr. and Mrs. [redacted] [the applicant and her spouse] have two children together and Mrs. [redacted] [the applicant] has two children from a former relationship. However, Mr. [redacted] has raised these two children as if they were his natural children...Without his wife, the qualifying relative now has much more responsibilities than before and such differences must be taken into account...They are a very close family...the loss of their mother will undoubtedly cause them to suffer extreme hardship...such a loss would impact the decisions made by their father as to their well-being....

*Supra* at 5-6.

Counsel further states,

...If he [the applicant’s spouse] were separated from his wife, that is, he chose to remain in the United States, the separation would cause depression....

Mr. [redacted] [the applicant’s spouse] would suffer extreme, potentially devastating psychological hardship if Mrs. [redacted] were forced to leave the United States, as he depends on her for emotional support for himself and their three children....

*Counsel’s Letter*, dated March 31, 2006.

As referenced above, the unsupported assertions of counsel do not constitute evidence. In this case, counsel has provided no supporting documentation to substantiate the claims made by her with respect to the hardships the applicant’s spouse will face were the applicant to relocate abroad. Based on the lack of documentation provided by counsel and/or the applicant, it is unclear to the AAO how old the children are, what their immigration status is, who has custody over the children born to the applicant from her previous marriage, what relationship the applicant’s former spouse has with his children, and what specific involvement the applicant’s spouse has with the children. As such, any hardships that the applicant’s spouse may face due to the hardships being faced by the children cannot be considered by the AAO at this time.

Moreover, although counsel states that the applicant's spouse will face depression if the applicant is removed from the United States, no documentation from a medical professional has been provided that outlines in detail the applicant's spouse's current mental health situation and what, if any, impact the applicant's departure would have on his mental health. As such, it can not be concluded that the applicant's spouse, the only qualifying relative in this case, will suffer extreme hardship were the applicant subject to removal due to her inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. Counsel states as follows:

Mr. [REDACTED] [the applicant's spouse] cannot move to Mexico as he has never lived in Mexico and is not a Mexican citizen. Mr. [REDACTED] was born in Guatemala and as such can only live in Guatemala or the United States....He has no family or community ties to Mexico and has rebuilt his life and family in the United States. He has no job prospects in Mexico as he has never lived there and it would be very hard to obtain employment there....

If forced to return to Mexico to remain with his wife, Mr. [REDACTED] would be returning to a country where he has never lived let alone visited. It would be difficult for him to start his life over again at this point in his life....

*Id.* at 2-3.

To begin, there is no requirement that the applicant return to her home country due to her inadmissibility. As such, although counsel states that the applicant's spouse is from Guatemala and cannot reside in Mexico, it has not been established that he would be unable to relocate to Guatemala, his home country, with the applicant. Moreover, even if they were to decide to relocate to Mexico, it has not been established that the applicant's spouse is unable to reside there on a long-term basis. In addition, no documentation has been provided that establishes that the applicant and/or her spouse would be unable to obtain gainful employment in Mexico, or any other country of their choosing. Finally, it has not been established, by objective evidence, that a relocation abroad would cause the applicant's spouse extreme emotional and/or psychological hardship. Again, the AAO notes that counsel provides no documentation to substantiate the claims made by her that the applicant's spouse will suffer extreme hardship were he to relocate abroad. 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)).

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

A review of the documentation in the record, when considered in its totality reflects that counsel has failed to establish that the applicant’s lawful permanent resident spouse would suffer extreme hardship if she were removed from the United States. 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. The waiver application is denied.