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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: SACRAMENTO, CA
(RELATES)

Date: JUL 14 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 Field Office Director, Sacramento, California. The matter 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and is the father of three U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his spouse and the application was denied accordingly. *Decision of the Field Office Director*, at 5, dated November 26, 2007.

On appeal, counsel asserts that the applicant's spouse has diabetes, she would encounter extreme hardship without the applicant, hardship to the children must be given weight and the field office director abused his discretion. *Form I-290B*, received January 8, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and a letter from the applicant's spouse's physician.¹

The record indicates that the applicant attempted to enter the United States on January 6, 1999 by presenting another person's lawful permanent resident card and was expeditiously removed under section 235(b)(1) of the Act. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States by fraud or willful misrepresentation.²

The AAO notes that the applicant entered the United States without inspection in 1992 and departed the United States in December 1998. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until December 1998, the date of his departure

¹ The applicant's Form I-290B indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days. The brief and/or additional evidence was not received by the AAO within 30 days. On May 16, 2008, the AAO sent a fax to counsel requesting any material which had been sent within the 30 day period. The fax stated, "The regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. If counsel did not submit the brief and/or evidence within the period indicated on the Form I-290B, please check the block below....Counsel did not file a brief or evidence in support of this appeal as indicated on Form I-290B." Counsel responded by stating that no brief was filed and requested 15 days to submit a brief (which would be more than five months after the I-290B filing date). As no brief and/or additional evidence was filed within the initial 30 day period, the AAO will adjudicate the case based on the record at hand. The regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed.

² The applicant is also inadmissible pursuant to sections 212(a)(9)(C)(i)(I) and (II) of the Act for entering the United States without inspection in February 2000 after accruing more than one year of unlawful presence and after his removal under section 235(b)(1) of the Act.

from the United States. Therefore, the applicant is also inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his December 1998 departure.

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(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(9)(B)(v) and 212(i) waivers of the bar to admission are dependent first upon a showing that the bar imposes extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's child is not a permissible consideration except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Mexico or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to show extreme hardship to his spouse in the event of relocation to Mexico. The applicant's spouse states that she has had diabetes for the past ten years and does not know if she would get the same medical care in Mexico that she is receiving in the United States. *See Applicant's Spouse's Statement*, dated July 10, 2007. The applicant's spouse states that all of her family resides in the United States, they are all lawful permanent residents, her family is very close and they help each other, her children would lose contact with their extended family, the applicant's family is in the United States and her family is close to them. *Id.* However, while the record confirms that the applicant's spouse has diabetes, it does not include evidence that establishes the severity of the applicant's spouse's diabetes or that indicates she could not obtain treatment in Mexico. The record also fails to discuss or document hardship she would encounter based on separation from her family and does not address any other hardships that would result from relocation. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that the applicant is the only one employed in the family and her family would have to obtain public assistance without his support. *Applicant's Spouse's Statement*. While separation as a result of removal commonly creates emotional stress and financial and logistical problems, the record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have relocated with family members upon removal. The record contains

no evidence that, following the applicant's removal, the applicant's spouse would be unable to obtain employment to support herself and her children, that the applicant would be unable to contribute to his family's support from outside the United States or that the applicant's spouse's family members could not assist her financially were the applicant to be removed. In the absence of such evidence, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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 who are removed.

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(a)(9)(B) 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.