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U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES, CA

Date: **MAY 14 2008**

IN RE:



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:



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 District Director, Los Angeles, California, denied the waiver application, and it 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 to the United States by fraud. The applicant is the daughter of a naturalized U.S. citizen and the mother of two U.S. citizen children. 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 mother and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 17, 2006.

The record reflects that, on June 26, 1988, the applicant appeared at the Calexico, California, Port of Entry. The applicant presented a counterfeit Form I-551, Lawful Permanent Resident Card. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by fraud. On June 29, 1988, the applicant was convicted of false documentation and conspiracy to elude inspection in violation of 18 U.S.C. §§ 1546 and 371, and 8 U.S.C. § 1325. The applicant was sentenced to 45 days in jail. On August 8, 1988, the applicant was placed into immigration proceedings. On August 9, 1988, the immigration judge ordered the applicant removed. On the same day, the applicant was removed from the United States and returned to Mexico. On October 18, 1994, the applicant's mother, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on December 8, 1994. On March 31, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On July 27, 2005, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that she had reentered the United States without inspection or admission in January 1990. On March 22, 2006, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her mother and children.

On appeal, counsel contends that the district director failed to properly review all the equities in the applicant's case. *See Counsel's Brief*, dated July 13, 2006. In support of her contentions, counsel submits the referenced brief, general medical information and copies of case law. The entire record was reviewed in rendering a decision in this case.

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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

The district director based the finding of inadmissibility under 212(a)(6)(C)(i) of the Act on documentation, including the sworn testimony of the applicant, establishing that the applicant attempted to obtain admission to the United States by fraud in 1988. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's mother, the only qualifying relative.

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 has held:

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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 record reflects that, on March 4, 2005, the applicant married her spouse, [REDACTED] (Mr. [REDACTED]). Mr. [REDACTED] is a native and citizen of Mexico who is a derivative family member on the applicant's Form I-130. The applicant has a 22-year old daughter from a previous relationship who is a native and citizen of Mexico. The applicant has a 17-year old daughter from a previous relationship who is a U.S. citizen by birth. The applicant and [REDACTED] have a 12-year old son who is a U.S. citizen by birth. Ms. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1996. The applicant has three siblings who are all natives of Mexico who became naturalized U.S. citizens. The applicant is in her 40's and [REDACTED] is in her 50's.

On appeal, counsel contends that the applicant's entire family will suffer extreme hardship if the applicant is denied admission to the United States. However, as previously noted, the applicant's mother is the only qualifying relative and any hardship to the applicant's family members will not be considered in this decision, except as it may affect the applicant's mother.

On appeal, counsel asserts that [REDACTED] will suffer extreme hardship if the applicant is denied admission to the United States. Counsel asserts that the applicant assisted [REDACTED] financially when the family first arrived in the United States by leaving school and working to support the family. Counsel asserts that the applicant continues to help [REDACTED] financially, with errands such as driving, or in keeping her company. Counsel asserts that, although [REDACTED] is no longer dependent upon the applicant to support the family, she depends on the applicant for emotional support. Counsel asserts that the applicant has always either lived with [REDACTED] or close by and they have never been separated, except for a year and a half following the applicant's removal to Mexico. Counsel asserts that [REDACTED] is very close to her grandchildren as a result of residing with the applicant and her children for many years. Counsel asserts that denial of the waiver would be detrimental to [REDACTED] because she would be forced to stop seeing the applicant and her grandchildren. Counsel asserts that it is extremely important to [REDACTED] that the applicant's children have the opportunity to attend school and continue their education. Counsel asserts that the applicant is a diabetic, has high blood pressure, suffers from colitis, anemia, had a cyst on her ovary and is morbidly obese. Counsel asserts that the applicant currently receives treatment through insurance and would be unable to continue to afford to see a doctor or pay for medical care in Mexico. Counsel asserts that the knowledge that the applicant would be unable to receive medical treatment in Mexico would cause [REDACTED] emotional and psychological hardship. Counsel asserts that [REDACTED]'s grandson has a medical history of viral gastroenteritis and suffers from asthma and upper respiratory infections. Counsel asserts that [REDACTED]'s grandson currently receives treatment through insurance and would be unable to continue to afford to see a doctor or pay for medical care in Mexico. Counsel asserts that [REDACTED]'s grandson's asthma will become worse in Mexico and he is still being treated for upper respiratory infections. Counsel asserts that the knowledge that her grandson would become sick and would not be treated in Mexico would cause [REDACTED] emotional and psychological hardship.

[REDACTED], in her declaration, states that she will be devastated if one of her children has to leave the United States. She states that, other than the time the applicant spent in Mexico after her removal, she has never been separated from her. She states that she enjoys having her daughter so close and that they are able to spend quality time together. She states that she loves seeing her grandchildren on a daily basis. She states that she knows that she can count on the applicant for anything and, since the applicant is her eldest child, the

applicant has always been her moral support and has many times helped her financially. She states that the applicant is the person who takes her to the doctor when she does not feel well or who drives her when her car does not work. She states that the applicant is not only her daughter, but also her right hand and lifetime companion. She states that she does not financially rely on the applicant as she once did but she needs her by her side in both difficult and good times. She states that it will be very hard for her if she can no longer see the applicant on a daily basis as she does not have the same relationship with her other children.

The applicant, in her declaration, states that she is extremely close to her mother and [REDACTED] counts on her for everything. She states that her mother is close to her children. She states that her mother has suffered a lot in her lifetime and she wants to continue to help her mother and be her support both morally and financially. The applicant states that it will be hard on her mother to be separated from her and her children.

Medical documents in the record indicate that the applicant underwent repair of an umbilical hernia in 2000. They also indicate that the applicant was treated for colitis and an eye abrasion in 2003 and a yeast infection and fibroids (leiomyoma) in 2005. There is no medical evaluation of the applicant's health included in the record. Instead, much of the medical documentation submitted by counsel consists of hand-written physician's treatment notes that are sometimes illegible. While counsel contends that the applicant suffers from diabetes, high blood pressure, colitis, anemia, cysts and morbid obesity, the documentation indicates that she has not received treatment or medication for any mental or physical illnesses since 2005. The medical documentation does not establish that the applicant has been diagnosed with diabetes or high blood pressure. Neither does the documentation indicate whether the applicant is on medication, requires long-term medical care, what the prognosis is for her condition, or that she would be unable to receive appropriate medical treatment in Mexico.

The record also contains medical documentation indicating that the applicant's daughter was treated for an upper respiratory infection (common cold) in 2002 and 2004. Additional medical documentation indicates that the applicant's son was diagnosed with asthma in 1998 and was treated for common childhood illnesses such as upper respiratory infections (common cold or sinus infection), eye infections, tonsillitis, otitis media (ear infection), and gastroenteritis (stomach flu) between 1998 and 2005. The AAO, again notes that much of the medical documentation submitted by counsel consists of hand-written physician's treatment notes and that the record contains no medical evaluation of either of the applicant's children. There is no indication that the applicant's son has been prescribed any treatment in relation to his asthma since 2004 and the doctor notes that, in 2005, the child was not on any medications. The documentation does not indicate whether the applicant's children are on medication, require long-term medical care, what the prognosis is for their condition(s), that they would be unable to receive appropriate medical treatment in Mexico or that any condition they have would become worse in Mexico.

There is no evidence in the record to establish that [REDACTED] suffers from any physical or mental illness or that the applicant or her grandchildren suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would experience emotional hardship as a result of her separation from the applicant and her grandchildren, the record does not demonstrate that her emotional reactions are different or more severe than those normally experienced when families are separated by removal. Furthermore, the record indicates that [REDACTED] has family members in the United States, such as her other adult children and their families, who may be able to assist her emotionally and physically in the applicant's absence.

Counsel asserts that the applicant and [REDACTED] will be torn apart if the applicant is denied admission and that this is hardship that is over and above the normal economic and social disruptions involved in the removal of family members. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute “extreme hardship.”

The applicant’s and [REDACTED]’s declarations do not describe any hardships that [REDACTED] might suffer if she were to accompany the applicant to Mexico. Counsel, however, asserts that [REDACTED] has not resided outside the United States since 1981 and all six of her children reside in the United States in the Los Angeles, California area. Counsel asserts that [REDACTED] has not returned to Mexico except for brief visits and she will be unable to readjust to living in Mexico. Counsel asserts that [REDACTED] has no family left in Mexico. Counsel asserts that if [REDACTED] joined the applicant and her grandchildren in Mexico she would be unable to see her other children and grandchildren who reside in the United States. Counsel asserts that it is extremely important to [REDACTED] that the applicant’s children have the opportunity to attend school and continue their education. Counsel asserts that [REDACTED] is in good health and is able to visit the doctor for preventative medicine through insurance. Counsel asserts that [REDACTED] would be unable to visit a doctor in Mexico without worrying about the cost of her visit or medication. Counsel asserts that Mexico is currently suffering a severe economic crisis and the school system is in disarray.

Without supporting documentary evidence, the assertions of counsel will not meet the applicant’s burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). The AAO is, therefore, unable to find that [REDACTED] would experience hardship should she choose to join the applicant in Mexico. Additionally, the AAO notes that, as previously noted, [REDACTED], as a U.S. citizen, is not required to reside outside of the United States as a result of denial of the applicant’s waiver request and, as discussed above, she would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties that arise whenever a child is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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 thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen mother as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.