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U.S. Citizenship  
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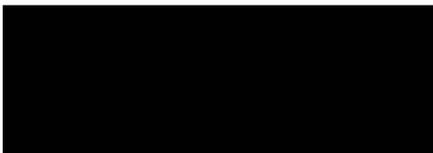
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i), 8 U.S.C. section 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. The decision was appealed to the Administrative Appeals Office (AAO) which rejected it as untimely filed. Counsel has filed a motion to reopen and reconsider the AAO's decision. The appeal will be reopened and the AAO's decision to reject it as untimely filed withdrawn. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found 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 sought to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (I-130) filed by her U.S. citizen daughter and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her daughter and her lawful permanent resident spouse.

The record reflects that the applicant attempted to procure admission to the United States at San Ysidro, California on December 11, 1977 by claiming to be a U. S. citizen and presenting a fraudulent baptismal certificate as proof that she had been born in the United States. The applicant was denied entry to the United States and returned to Mexico. The applicant and her children subsequently entered the United States without inspection in 1994.

On April 12, 2000, the applicant's daughter, \_\_\_\_\_ became a naturalized U.S. citizen. On October 10, 2000, she filed the Form I-130 petition. The petition was approved on September 6, 2001. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on or about November 1, 2001 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about November 19, 2003.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated August 31, 2005. The decision was appealed to the AAO. On August 9, 2007, the AAO rejected the appeal as untimely filed. On August 15, 2007, counsel filed a motion to reopen and reconsider this decision, contending that the appeal was filed in a timely manner and submitting evidence showing the date on which the appeal was submitted. Upon reviewing this evidence, the AAO determines that the appeal was timely filed. Accordingly, the AAO withdraws its August 15, 2007 decision and reopens the applicant's appeal.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the waiver of inadmissibility is not granted. *Appeal Brief*, dated September 29, 2005, at 2. Counsel asserts that the applicant and her spouse have been living together in the United States since 1994 (they had not lived together after the applicant's spouse left Mexico for the United States in 1976), and the applicant's spouse depends on her to perform all housekeeping responsibilities while he works full-time as a truck driver. *Id.* at 6-7. Counsel observes that the applicant's spouse has now resided in the United States for over 30 years, and asserts that the Board of Immigration Appeals (BIA) has, in several decisions, given significant weight to length of residence as a hardship factor. *Id.* at 8. Counsel also observes that the Ninth Circuit Court of Appeals has given significant weight to separation of family members as a hardship factor, and that the intent of Congress in enacting waiver provisions was to keep families together. *Id.* at 9. Counsel asserts that if the

applicant's spouse decides to remain in the United States, he will suffer extreme hardship from being separated from his spouse. Counsel also contends that the applicant's spouse will suffer extreme hardship if he relocates to Mexico, as he will be separated from his children, grandchildren and "all close family." *Id.* at 9. Counsel contends that the applicant's spouse would also suffer hardship if he relocated to Mexico because he would be forced to abandon his employment, house, and social ties in the United States. *Id.* at 10. Counsel asserts that the applicant's spouse would suffer economic and other hardship in Mexico, as employment is scarce, the crime rate is high, and medical care is often inadequate. *Id.* at 10-11. Finally, counsel asserts that the positive equities outweigh the single adverse factor, the applicant's misrepresentation in 1977, warranting a favorable exercise of discretion. *Id.* at 11.

The record contains, among other documents, affidavits from the applicant's spouse; employment, tax, bank and mortgage records; copies of birth certificates for the applicant's children and grandchildren; a copy of the naturalization certificate for the applicant's daughter [REDACTED], and naturalization certificates and permanent resident cards for other relatives. The entire record was considered in rendering a decision on the appeal.

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.

As stated above, the record reflects that the applicant attempted to procure admission to the United States at San Ysidro, California on December 11, 1977 by claiming to be a U. S. citizen and presenting a fraudulent baptismal certificate as proof that she had been born in the United States. The applicant was denied entry to the United States and returned to Mexico. The applicant has not disputed on appeal that she is inadmissible under section 212(a)(6)(C) 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 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, her children or her grandchildren is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the

application. The only qualifying relative is the applicant's lawful permanent resident spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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).

As observed by counsel, the Ninth Circuit Court of Appeals has stated that "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his affidavits, the applicant's spouse asserts that he needs the daily assistance and moral support of the applicant. He indicates that she performs all the household work and that he would feel "very distressed" if he were separated from her. He states that he has all his family in the United States and that he would like to remain with them.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The applicant's spouse is not financially dependent on the applicant, and the record indicates that all of their children are now adults and do not require the applicant's care. The record also reflects that the applicant's spouse chose to live in the United States while his spouse remained in Mexico from 1977 to 1994. The evidence does not show that the applicant's spouse experienced extreme hardship during this time. The AAO acknowledges the significance of family separation as a hardship factor, but also notes that the Ninth Circuit in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children, not the hardship involved in separating a husband and wife who previously chose to live apart for 18 years. The AAO concludes that the hardship described by the applicant's spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also failed to demonstrate that her spouse would experience extreme hardship if he relocated to Mexico. The AAO acknowledges that the applicant's spouse has resided in the United States for a significant period of time, but also notes that he is a native of Mexico. Counsel and the applicant's spouse have asserted that he would be separated from his immediate family if he returned to Mexico, but the record fails to reflect that the applicant's children, with the exception of daughter [REDACTED], have acquired legal status in the United States since allegedly entering without inspection with the applicant. Counsel has asserted that the applicant would be unable to find employment in Mexico, and that his health and safety would be at risk there. However, no evidence has been submitted to substantiate these assertions. 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 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). The AAO acknowledges that the applicant would lose his job if he relocated to Mexico, but his hardship, even when combined with the other hardship factors present in this case, is not extreme. The mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *Matter of Pilch*, 21 I. & N. Dec. 627, 631 (BIA 1996).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required under section 212(i) of the Act. 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 rests 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.