U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California 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 inadmissible pursuant to § 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 in 1990 by using an identity document in another individual's name. The applicant was not allowed to enter the United States and voluntarily returned to Mexico. On February 2, 1998 the applicant filed an I-485 Adjustment of Status application based on her 1990 marriage to a U.S. citizen. The applicant seeks a waiver of inadmissibility under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the U.S.

In a decision dated December 3, 2003, the district director denied the applicant's Application for Waiver of Grounds of Excludability (Form I-601). The district director determined that the applicant failed to demonstrate that her husband would suffer extreme hardship on account of her inadmissibility. On appeal, the applicant asserts that the Service, now Citizenship and Immigration Services (CIS), failed to apply the "seminal case on extreme hardship," which, according to the applicant, is *Matter of Anderson,* 20 I&N Dec. 245 (BIA 1994) [sic]. The applicant states that CIS instead applied incorrect caselaw. The applicant presented no additional evidence or information pertaining to her extreme hardship claim on 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.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent. It is noted that hardship to the applicant herself or to her children is not relevant to the analysis of this waiver. In the case at hand, the only qualifying relative is the applicant's husband. In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose is served in discussing whether the applicant merits a waiver as a matter of discretion.

The Board of Immigration Appeals (BIA) provides a list of factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act in *Matter of Cervantes-Gonzalez,* 22

I&N Dec. 560, 565-66 (BIA 1999). These factors include the presence of a 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.

The record reflects that the applicant has a 51-year-old U.S. citizen husband and a 12-year-old U.S. citizen son. According to the documentation, the applicant is unemployed. The applicant submitted a statement by her husband in her original waiver application. Her husband indicated that he could not return to Mexico to accompany the applicant, as he had not lived there in many years and had no family left in that country. He added that their son would have trouble adapting to life in Mexico. The applicant's husband also wrote that if the applicant were removed, he would suffer extreme hardship. The record contains no evidence to establish that the applicant's husband would undergo extreme hardship in either situation, however.

The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1423 (9th Cir. 1987) *citing Bastidas v. INS,* 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

The AAO notes that on appeal, the applicant submitted no new evidence or information pertaining to her extreme hardship claim. The applicant also provided an incorrect citation for *Matter of Anderson*; the correct citation is *Matter of Anderson,* 16 I&N 596 (BIA 1978). *Matter of Anderson* involved a fifty-five year old native of the Dominican Republic who applied for suspension of deportation based on the extreme hardship he would suffer due to the weak economic conditions he faced in his native country. In the case at hand, the applicant's own extreme hardship is irrelevant. Only her husband's situation need be considered, and, since he is a U.S. citizen, he is not required to relocate to any other country. Moreover, although the applicant asserts on appeal that her two U.S. citizen children (in her original application, she only referred to one child) will suffer hardship if she is removed from the U.S., as noted above, § 212(i) of the Act does not list children as qualifying relatives for extreme hardship purposes.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen 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 § 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.