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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: [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, San Francisco, 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 to be inadmissible to the United States under § 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 on or about May 31, 1996 by fraud or willful misrepresentation by using a border crossing card in another person's name. As a result of her actions, the applicant was deported from the United States on June 6, 1996. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her 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 Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The district director also found that the applicant did not merit positive discretionary consideration; however, since the record did not establish extreme hardship, it was unnecessary to conduct any discretionary analysis. On appeal, counsel contends that the applicant establishes extreme hardship to her spouse whether he chooses to remain in the United States or relocate to Mexico. Counsel asserts that denial of the waiver would cause the applicant's husband financial and emotional hardship. Counsel also maintains that the applicant's husband cannot take the applicant back to his native Iran, as he would face hardships there. On appeal, counsel submits a declaration by the applicant's husband.

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.

The record reflects that the applicant made a willful misrepresentation of a material fact by purchasing and using a border crossing card not in her own name in order to obtain entry into the United States. She is therefore subject to the grounds of inadmissibilty found at § 212(a)(6)(C) of the Act. A § 212(i) waiver of the bar to admission resulting from violation of § 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 of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

In his declaration on appeal, the applicant's husband asserts that the district director did a quick review of the record, resulting in a hasty denial. There is no evidence that this is the case, or that the district director failed to consider the entire record. The AAO concurs with the district director's determination that the applicant failed to establish extreme hardship to her husband.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant, as he does not speak Spanish and would not be able to obtain employment. Counsel also maintains that the applicant would be unable to obtain employment in Mexico. There is no evidence on the record to substantiate counsel's claim that the applicant and her husband would be unable to support themselves in Mexico.

Counsel asserts that the applicant's husband would face extreme financial hardship if he remains in the United States while his wife relocates to Mexico, since she would not be able to find employment and could not contribute to the family's finances. The record indicates that the applicant currently does not contribute to the family budget; hence, her unemployment would not represent a loss of income for her husband. The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility; however, the record does not establish that the applicant's spouse will be unable to maintain his financial situation if the applicant departs from the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Counsel also contends that the applicant's marriage would deteriorate due to a separation of the partners, and this would constitute extreme hardship to her husband. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. Unfortunately, such concerns are common to separations resulting from the removal of one of the partners, and do not go beyond that which is to be expected in similar situations.

Counsel also states that the applicant's husband cannot return to Iran, where he was born, with the applicant, as his relationship with his family in that country is weak, and he fears anti-American sentiment. The record fails to support these claims with any documentation, and in any case the applicant's husband would not be required to relocate outside 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 being deported.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.