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

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: OCT 24 2005

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim 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 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 having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the daughter of lawful permanent residents of the United States. 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 spouse, parents, in-laws and children.

The interim 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. *Decision of the Interim District Director*, dated March 17, 2004.

On appeal, counsel states that Citizenship and Immigration Services (CIS) erred in denying the application for waiver of grounds of inadmissibility. Counsel contends that CIS abused its discretion and did not consider the cumulative effect of the hardship factors enumerated in the application; failed to provide an explanation for the decision and ignored the hardship of two qualifying relatives. Counsel states that, on appeal, the applicant presents new evidence that was not previously available. *Form I-290B*, dated April 16, 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on or about February 7, 1997, the applicant attempted to procure admission to the United States by presenting a resident alien card that belonged to another person to immigration officials.

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.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 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 section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and/or parents. 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 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.

Counsel asserts that the applicant's spouse would suffer hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel contends that the applicant's spouse is a United States citizen and does not have any relatives in Mexico. *Appeal from Denial of Application for Adjustment of Status and Denial of I-601*, dated April 14, 2004. Counsel states that the applicant's spouse has not been to Mexico since 1996 and that his entire family is legally resident in the United States. *Id.* at 2. Counsel indicates that the applicant's spouse fears that his children will be deprived of educational opportunities as well as interaction with their relatives and extended family if they relocate to Mexico. *Id.* at 4. Counsel asserts that the applicant's spouse is unable to obtain health care insurance that will cover the applicant and their children if they reside in Mexico. *Id.* at 5. Counsel further contends that if the applicant's spouse relocates to Mexico, the parents of the applicant's spouse will be deprived of their annual visits to the family in California during which the applicant always cares for them. *Id.*

The record fails to establish extreme hardship to the applicant's spouse if he remains in the United States in order to maintain his proximity to extended family members and gainful employment as well as educational opportunities and adequate health care for his children and a residence at which his parents can visit his family. Counsel asserts that the applicant's spouse earns a sufficient income, but not enough to maintain two households. *Id.* at 3 ("The husband states he has been working for the same employer for the last 8 years, and makes $20.00/hr."). The record fails to establish that the applicant's spouse will be unable to contribute to her financial maintenance from a location outside of the United States. Counsel states that the applicant's spouse cannot keep his children in the United States in the absence of the applicant, however counsel provides no support for this assertion. *Id.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that counsel indicates that the applicant's spouse and parents as well as the parents of the applicant's spouse will suffer emotional hardship as a result of separation from the applicant. *See id.* at 3 ("The husband will suffer extremely as a devout Catholic, if deprived of the company of his wife..."). *See also id.* at 6 ("Appellant's parents and in-laws enjoy the company of appellant and visiting with their granddaughters."). While the separation from the applicant imposed on her spouse and parents and in-laws by inadmissibility is regrettable, assertions of emotional hardship made by counsel in the absence of substantiating documentation do not form the basis for a finding of extreme hardship. The AAO notes that the record does not contain any report or evaluation by a mental health professional in relation to the hardship suffered by any qualifying relative in the instant application. Counsel states that the applicant's parents are aging and are unable to live alone. *Id.* at 6. Counsel indicates that they enjoy spending prolonged visits at the home of the applicant's family. *Id.* The record contains a declaration of the applicant's parents with English translation attesting to their visits and indicating that the applicant "takes care of all their expenses." *Declaration of J[redacted] and M[redacted]*, undated. The AAO finds that the purpose of the statements of counsel and the applicant's parents is ambiguous. While the statements seem to indicate that the applicant provides financial and physical support to her parents for periods of time, the record fails to establish that the applicant' parents will suffer extreme hardship financially or physically as a result of the applicant's departure from the United States. As it currently stands, the record fails to establish that the applicant is the only person able to provide financial and/or physical assistance to her parents and the record does not demonstrate the level of financial and/or physical assistance that the applicant's parents require.

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* 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. Moreover, the AAO notes that 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. The AAO recognizes that the applicant's spouse and parents will endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or parents 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 section 212(i) 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.