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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: DEC 27 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and Section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v)

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of Mexico who first entered the United States without inspection in November 1992. She remained in the United States until her departure in August 1999. On March 1, 2000, she reentered the United States by showing a false Border Crossing Card. She was found to be inadmissible to the United States under section 212(a)(9)(B) for being unlawfully present for more than one year, departing, and again seeking admission within 10 years, and under section 212(a)(6)(C)(i) for having sought to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with her U.S. citizen (USC) spouse, [redacted] (Mr. [redacted]) and USC child, the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and 212(a)(9)(B)(v).

The record reflects that Mrs. [redacted] entered the United States without inspection in 1992 and lived here continuously until her departure to Mexico in August 1999. On March 1, 2000, the applicant reentered the United States using a false Border Crossing Card. As a result of this misrepresentation and unlawful presence, the district director found the applicant to be inadmissible to the United States. *District Director's decision,* dated June 21, 2004. The district director also found that the applicant 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). *Id.*

On appeal, counsel submits a brief, and several documents not previously submitted. The record includes the following: rent verification for Mr. and Mrs. [redacted] a records check from the Chicago Department of Police for Mrs. [redacted] a reference letter from [redacted] on behalf of Mrs. [redacted]; a note from [redacted], stating that Mrs. [redacted] suffers from lower back and undergoes pain management therapy; a letter from the church Mr. and Mrs. [redacted] attend; information about the benefits of breastfeeding; verification that Mr. [redacted] is enrolled in college; the baptism certificate of Mr. and Mrs. [redacted]' son, [redacted], age 4; the couple's marriage certificate; a photo of Mr. [redacted] with his son; and a copy of Mr. [redacted]'s naturalization certificate. The AAO reviewed the entire record in arriving at 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.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(i) and 212(a)(9)(B)(v) waivers of inadmissibility are dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse or parent of the applicant. Hardship the applicant herself experiences upon denial of her application for admission is not considered in section 212(i) and 212(a)(9)(B)(v) waiver proceedings. Hardship the applicant's child experiences is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant's USC husband.

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, supra* at 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 the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch,* 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

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).

Counsel asserts that separation from his wife will result in extreme hardship to Mr. [redacted] because he wishes to attend college while working and will have to raise his son as a single father. Single parenting, while challenging, is not sufficient to establish extreme hardship to Mr. [redacted] Single parents make adjustments to their schedules to deal with their children's school, counseling, and medical needs as a part of life. These logistical issues ensue when parents live separately. Counsel asserts that Mr. [redacted] family is too busy and lives too far away to participate in the care of Mr. [redacted] son but did not submit a breakdown of expenses or documentation regarding the average price of childcare in the area, to show that M[redacted] would be unable to pay childcare expenses or that inability to pay these expenses would result in extreme hardship to him. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Direct hardship to an applicant's child is not considered in waiver proceedings under section 212(i) and 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is left alone in the United States to care for a child, it is reasonable to expect that the children's emotional state due to separation from the other parent will have an impact on the qualifying relative. Yet counsel has not established that the applicant's husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility.

Counsel asserts that Mr. [redacted] would suffer extreme hardship if Mrs. [redacted] s Form I-601 is denied because without the presence of his wife he could not perform his job and attend college at the same time. Counsel asserts that Mr. [redacted] and his son would have to live without the love, care, and support of Mrs. [redacted] Counsel has not provided documentation to show why Mr. [redacted] and his son could not relocate to Mexico to avoid separation from Mrs. [redacted] Counsel asserts that all of Mr. [redacted]' and Mrs. [redacted] family live in the United States, but did not provide documentation to establish the immigration status of these family members or how these relationships would contribute to any extreme hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Counsel asserts that Mr. [redacted] has gotten physically ill over the prospect of a denial of Mrs. [redacted] waiver application, yet does not submit objective documentation to supplement M[redacted]'s claim of extreme psychological and emotional hardship. *Matter of Obaigbena.*

Although it is clear that her husband would suffer emotionally, if she returned to Mexico and he remained here, or if he left his family in the United States to be with his wife in Mexico, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mr. [redacted] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

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 husband faces extreme hardship if the applicant is refused admission. 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 hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if he remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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(h) 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.