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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAY 09

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, Chief
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 to be inadmissible to the United States (U.S.) 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 attempted to procure admission into the United States by fraud or willful misrepresentation in January 2003. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with her spouse and child.

The district director concluded that the applicant did not establish that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility to the United States. The application was denied accordingly. *District Director Decision*, dated November 3, 2004.

On appeal, counsel asserts that the director did not give sufficient weight to the severance of family ties, did not address or weigh the reason of inadmissibility against the hardship to the family, and his decision is a violation of the U.S. citizen spouse's fundamental right to marry, under the Equal Protection Clause of the 14th Amendment. *Counsel's Appeal's Brief*, December 22, 2004.

The AAO notes that Constitutional issues are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

The record includes, but is not limited to: the applicant's marriage certificate, the birth certificate of the applicant's daughter, photographs of the applicant's family, and a medical record for the applicant's father Mr. Hilario Lopez Galeana.

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 indicates that in January 2003 the applicant presented a Border Crossing Card at the U.S.-Mexico border. The applicant stated to the inspecting officer that she was entering the United States for a 15 day visit when, in fact, she had been residing in the United States. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the

bar imposes an extreme hardship on a qualifying family member. Hardship the alien herself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. In his appeal's brief, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of moving to Mexico to reside with the applicant. Counsel states that economic conditions in Mexico are poor. He goes on to explain that the only type of work that may be available to the applicant's spouse is manual labor and he would not be able to perform manual labor because he is too mature in age. Counsel also asserts that if the applicant's spouse moved to Mexico he would be uprooted from his community in the United States. The AAO notes that without documentary evidence to support his claims, 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 must submit documentation to support his claims. In the current application counsel has not done so, therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel asserts that the applicant would suffer extreme hardship in the form of family separation and financial difficulties. Counsel states that the applicant's spouse works full time while the applicant takes care of their daughter. The applicant does not contribute to the family's income. He states that if the applicant is removed from the United States he will suffer financially because he will now have to pay for childcare. Again, counsel submits no documentation concerning the specifics of the adverse effects that removal of the applicant will have on the spouse's financial situation nor does he show that other family members in the United States are unable to help with this situation. The AAO notes that the record contains four years of joint tax returns for the applicant and her spouse. The wages earned for a year on these tax returns range from $45, 260 to $63, 184.22, well above the poverty level for a family of three. In addition, counsel submitted no documentation to establish the extent of the spouse's emotional suffering. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 section 212(a)(9)(B) 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.