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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 25 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. 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 was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation. 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 husband, [redacted] and their three children, all of whom are U.S. citizens.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her husband, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated September 3, 2004.

On appeal, counsel for the applicant asserts that the applicant was not given an opportunity to supplement the I-601 although the decision to deny the waiver was made three years after the I-601 was filed; counsel states that the applicant's spouse and child have severe medical issues that need to be addressed in order to make a hardship determination. *Form I-290B*, filed October 6, 2004; *Brief in Support of Appeal,* filed October 28, 2004. Counsel also states that "the Service did not properly determine if applicant misrepresented herself and knowingly made a material false statement to the Service," specifically because no translator was present during her adjustment interview and "no proper determination was made if applicant intended to commit fraud." *Brief in Support of Appeal,* at 3.

Along with his Brief, counsel submits, *inter alia,* (1) a declaration from [redacted] explaining the circumstances of the submission of her Registry application in 1989, which was denied based on a finding of fraud; noting the medical problems of her daughter and her husband; and stating that she is a full-time housewife with no employment skills that would benefit her in finding employment in Mexico; (2) a declaration from [redacted] describing how he and their three children love and need [redacted] and stating that they would be forced to go with her to Mexico if she were deported because he cannot take care of them without their mother; he adds that he was injured at work in 2002 and diagnosed with a lower back injury that has kept him on disability and for which he is receiving treatment, that his wife cares for him and transports him for treatments when he cannot drive due to the general anesthetic that he receives, that it would be difficult for him to get to work in Mexico because of his injuries and difficult to get proper medical treatment for lack of insurance, which is currently provided by his employer along with worker's compensation; he states that it would also be very stressful for him to see his daughter without proper medical treatment in Mexico and his son without the special educational services that he gets in the United States; (3) letters from [redacted] son, mother, sister and brother-in-law describing her as a loving and caring mother and daughter who is supportive to her family; her mother adds that she is diabetic and that [redacted] takes her to the doctor; (4) a letter from the Los Angeles Orthopaedic Hospital explaining that the applicant's daughter [redacted] born in 1997, has been diagnosed with Legg-Calve-Perthes Disease, "a hip condition that if not treated or undertreated will increase her risk of osteoarthritis in early adulthood," that her care is managed by an orthopedist and a specialty pediatrician among other professionals, and that [redacted]

[redacted] continued care for [redacted] is necessary to ensure she receives the specialty medical care she requires; (5) a letter from the California State University, Los Angeles Health Careers Opportunity Program Saturday Academy welcoming the applicant's son, [redacted] to Saturday classes in the fall of 2004 to "explore interests and talents in health related disciplines"; and an Intermediate School Progress Report indicating excellent grades; (6) a letter from the [redacted], dated September 28, 2004, in reference to a "loss" that happened in June 2002, informing [redacted] that he "may be entitled to permanent disability benefits in addition to any other Workers' Compensation benefits [he] may have already received," adding that it is too soon to tell because his medical condition was not yet stationary and that his doctor will monitor progress and a medical evaluation will be done to determine any permanent disability he may have and what, if any, continuing medical care he will need for his injury; the letter states that this determination is expected to be made by December 26, 2004; (7) and proof of U.S. citizenship for [redacted] husband, three children and an aunt; and lawful resident status for two sisters, her parents and her husband's parents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Regarding the finding of inadmissibility, the record reflects that [redacted] filed an Application for Permanent Residence (Form I-485) in August 1989. The reason for the application was stated as "registre" (sic), and the date of entry into the United States was stated as 1971, thus establishing a claim of eligibility for permanent residence based on entry prior to January 1, 1972. Section 249 of the Act, 8 U.S.C. 1257, sets forth this ground of eligibility, which is sometimes referred to as "Registry." The applicant explains that she entered the United States in March 1989 at the age of 18, stating that "[i]n May 1989 I met an Immigration legal consultant who told me that I qualified for a work permit and social security card. I did not know at that time that he submitted a 'Registry' application for me. I did not submit any documents to the immigration consultant for my application for a work permit." *Declaration by* [redacted] undated, submitted with *Brief in Support of Appeal, supra.* She further states that when she went for an interview regarding the application the interviewing officer did not speak Spanish and she did not speak English and they were unable to communicate; in 2001 when she and [redacted] went to their adjustment of status interview, they were told that they needed a waiver because there was another file, and it was then that she found out that her

"registry" application had been denied; and she was not asked if she committed fraud. *Id.* Regardless of the circumstances surrounding the submission of the Registry application and whether [redacted] was aware of the fraudulent documents submitted in support of the application, the record contains an application signed by [redacted], with signatures dated at the time of submission and at the time of interview. Although [redacted] intent may have been to seek employment in the United States, "intent" is not a requirement for "willful misrepresentation." The record indicates that she made a willful misrepresentation of a material fact on an application for permanent residence in the United States by signing the I-485, under penalty of perjury, containing false information regarding her date of entry and supported by fraudulent documents. As a result of this prior misrepresentation, the applicant was properly found to be inadmissible to the United States.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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*** [redacted] **21 I&N Dec. 296 (BIA 1996). Counsel notes that the district director erred in** adjudicating the waiver under section 212(h) rather than 212(i). This decision corrects that error. The AAO notes that the standard for determining "extreme hardship" remains the same, though children are not considered "qualifying relatives" under section 212(i). The AAO also notes that, in addition to her husband, [redacted] parents, who are lawful permanent residents, are "qualifying relatives" in this case. There is, however, no information in the record relevant to a hardship determination for her parents other than unsubstantiated statements by the applicant's mother and other relatives regarding the state of her mother's health and the assistance provided by Given the lack of relevant evidence, the AAO cannot make a hardship determination regarding parents, and this decision will thus address hardship only to her 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* [redacted] 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of* [redacted] 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, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. 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). Hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Thus, hardship suffered by the applicant or the children will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's U.S. citizen husband.

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The record in this case indicates that [redacted] was born in Mexico in 1967, has been residing in the United States since 1986 and became a U.S. citizen in 1999; [redacted] was born in Mexico in 1970 and has been residing in the United States since 1989; they were married in 1992 and have three children, born in the United States in 1993, 1995 and 1997 respectively. Income tax records indicate that [redacted] is the sole support of his family, earning approximately $24,000 in 2000, the most recent year for which financial information is included in the record; his occupation is listed as "labor" and [redacted] occupation is listed as "housewife." Although the record includes a deed for a prior residence of the couple, there is no evidence that they own their current home. The couple has many family members who are lawful permanent residents in the United States, including the parents of both and two sisters of [redacted] was injured at work in 2002, but the record does not contain evidence of what kind of injury, how severe it was, what treatment was given, or what on-going treatment, if any, is needed. In fact, there are no medical reports or doctor's reports in the record. The only evidence of any injury is a letter from an insurance claims representative noting that he was injured and may be entitled to permanent disability benefits. *See Letter from the Fireman's Fund,* described *supra.* There is a letter in the record from a hospital social worker stating that [redacted] the couple's youngest child, requires on-going "specialty medical care" for an orthopedic condition affecting her hip *(see Letter from the Los Angeles Orthopaedic Hospital,* described *supra);* although the letter states that [redacted] "is the sole caretaker for her daughter" and must remain in the United States for [redacted] to receive this care, there is no explanation of what role [redacted] plays in this treatment or why someone else would be unable to fulfill the same function. Again, the record contains no medical reports or doctor's reports regarding the nature of the treatment or the severity of the condition. The record is silent regarding the availability of health care in Mexico.

[redacted] indicated in his statement that he would not be able to take care of the children without his wife, and that they would be forced to go with her to Mexico if she were deported. It is clear from the record that [redacted] enjoy a loving relationship and that they are caring and responsible parents; they have expressed concern over taking their children away from needed health care and the benefits of education in the United States. If they decided to relocate together with the children in Mexico rather than live separately, this would represent a significant change in their lives. There is no evidence, however, that they would not be able to adjust to these changes; [redacted] were adults when they left Mexico; neither the language nor the culture is new to them; and the children would have the care of both of their parents.

Although they claim that they could not find work in Mexico, and counsel states that [redacted] could be permanently disabled and will need continued medical care that he will not have access to in Mexico, these claims are not supported with any evidence; there is no medical evidence of a disability, and there is no evidence regarding employment, health or economic conditions in Mexico. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The 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* [redacted] 17 I&N Dec. 503, 506 (BIA 1980). 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)).

If [redacted] decides to remain with their children in the United States separated from his wife, clearly he and the children will suffer hardship due to the absence of her love and care. While he also states that he depends on his wife because he has a lower back injury and that his wife is responsible for his special care and transportation for treatment, his testimony alone is not sufficient evidence for the AAO to conclude that he is disabled to the point that he requires the applicant's assistance. As noted above, the record lacks a clear and thorough assessment from a medical professional to determine exactly the extent and nature of his work-related injury. Without adequate analysis from a medical professional, the AAO is unable to accurately assess true capability. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the applicant's burden of proof. *Id.* There is no evidence that [redacted] is unable to work in the United States. If he chooses to remain in the United States there is no evidence to suggest that he cannot continue to provide for his family financially; he will also have access to health care and ensure that his children continue to have access to the education and health care they are accustomed to in the United States. The children are all in school; there is no evidence to suggest that [redacted] is unable to act as sole caretaker, especially given the number of close relatives who form part of his and his wife's family in the United States.

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant should he remain in the United States; and that a move to Mexico will also present difficulties, including the challenge of finding work and the hardship that results from separation from his parents and from seeing his children separated from their customary health care and education. However, based on the record, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See* [redacted] *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, [redacted] *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. [redacted] 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.

Based on the foregoing, if the applicant is prohibited from remaining in the United States, the instances of hardship that will be experienced by her husband, considered in aggregate, do not rise to the level of extreme hardship. 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)(6)(C) 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.