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

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA (SANTA ANA) Date: OCT 26 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)

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 District Director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] (Mrs. [redacted]), is a native and citizen of Mexico who entered the United States on or about August 24, 1977, using a fraudulent U.S. birth certificate, and applied for adjustment of status on April 8, 2001. In order to remain in the United States with her lawful permanent resident (LPR) spouse, two adult U.S. (USC) daughters, and one adult LPR daughter, 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),.

The record reflects that on or about August 24, 1977, Mrs. [redacted] entered the United States using someone else's U.S. birth certificate. As a result of this misrepresentation, the director found the applicant to be inadmissible to the United States, pursuant to § 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i) for having sought to procure admission into the United States by fraud or willful misrepresentation. *District Director's Decision, dated December 28, 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 other previously submitted documents.

The record includes the following: a hardship statement from Mr. [redacted] dated September 20, 2002; Mr. [redacted] green card; the birth certificate of Mrs. [redacted] adult U.S. citizen daugther, [redacted] the couple's marriage certificate; an appointment notice for Mr. [redacted] at the Western Orthopedic Center on January 24, 2005; Mr. [redacted] W-2 form for 2004; proof that Mr. [redacted] received unemployment in 2004; proof that Mr. [redacted] received social security benefits in 2004; the results of a CT scan of Mr. [redacted] cervical spine performed on December 29, 2004; results of a CT scan of Mr. [redacted] brain performed on December 29, 2004; results of a CT scan of Mr. [redacted] umbar spine performed on December 16, 2004; what appear to be business and appointment cards for several eye doctors and other types of doctors; a prescription for Mr. [redacted] for Cipro; a prescription for Mr. [redacted] for an illegible medication; a notice from the Social Security Administration demonstrating back pay and an increase in benefits; a chart showing minimum wages for various occupations in four different geographic regions in Mexico; monthly living expenses in Mexico City; Mrs. [redacted] California Senior Citizen Identification Card; and an order by a cardiologist for two tests to be performed on Mr. [redacted] t Community Hospital, dated February 22, 2005. 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.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute, nor is hardship to her USC children. If extreme hardship to a qualifying relative, in this case the applicant's husband, is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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*, 22 I&N Dec. 560, 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, 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.

Although the record does not specify the back and eye conditions Mr. [redacted] suffers from, the record does contain the results of x-rays performed on his head and spine and does reflect that he receives $516 per month because he is disabled. The record contains documentation to illustrate lower wages in Mexico by geographic area and by occupation and the specific costs of monthly living in Mexico City. The record also reflects that Mr. [redacted] is a citizen of El Salvador and an LPR of the United States. This documentation shows that it would be difficult for Mr. [redacted] to live with his wife in Mexico but does not establish that he would suffer extreme hardship if she went to live in Mexico and he remained in the United States.

The record contains no statement from Mr. [redacted] detailing how he would be affected if separated from his wife. The statement he submitted with the original waiver application was only about one paragraph long and simply referred to the hardship Mrs. [redacted] would suffer if she were not admitted to the United States. He did not refer at all to the hardship *he* would suffer if his wife were not permitted to remain in the United States. On appeal, counsel did not submit a hardship statement from Mr. [redacted] to supplement the record. As such, the AAO is unaware if, or to what extent, Mr. [redacted] relies on Mrs. [redacted] to take care of him because of his disabilities. Counsel did not submit objective evidence to establish that separation from his wife would result in extreme emotional, psychological, or financial hardship on Mr. [redacted] In her brief, counsel asserts that the couple lives alone, shares their lives everyday, and that Mr. [redacted] sees his wife as the reason to live every day. These statements by counsel cannot be considered when determining the amount of hardship Mr. [redacted] would suffer if his wife's waiver application is denied. 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).

There is no documentation from any of Mr. [redacted] treating physicians detailing his medical conditions and the extent to which Mrs. [redacted] provides care to Mr. [redacted] The documentation submitted shows that Mr. [redacted] suffers from some sort of back problem, that he has had appointments with several eye specialists, and that he takes several types of prescription medications. But other than a vague assertion from counsel that Mr. [redacted] "will need to get operated within the next couple of months," it is unclear what specific back and eye problems he suffers from and how Mrs. [redacted] presence or absence affects or would affect him. Based on the existing record, the effect of separation on Mr. [redacted] is unclear and does 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 limited 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.