U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: AUG 2 8 2007

relates)

IN RE: Applicant: [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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 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 procured entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant attempted entry to the United States on January 19, 1989 and presented a Border Crossing Card belonging to another individual. The applicant is married to a naturalized U.S. citizen and 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 U.S. citizen spouse.

The 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 District Director,* dated December 22, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of the waiver request, counsel submits a brief and supporting legal memo, dated January 19, 2006; an affidavit from the applicant's spouse, a U.S. citizen, dated March 12, 2004; an affidavit from the applicant, dated March 9, 2004; letters from two of the applicant's children; a notarized letter from the applicant's mother-in-law, a lawful permanent resident, dated March 9, 2004; a letter from a physician treating the applicant's spouse outlining his health conditions, dated January 17, 2006, and select print-outs from the Internet explaining the health conditions referenced; community support letters, certificates of recognition and school and church letters on behalf of the applicant and her family; financial and tax documents for the applicant and her spouse; confirmation of employment letter issued to the applicant's spouse; marriage certificate; proof of U.S. citizenship for the applicant's spouse and four children; various photographs of the applicant and her family; and information about country conditions and unemployment concerns pertaining to Mexico, the applicant's home country. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (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.

To begin, counsel asserts and documents that the applicant's spouse suffers from hip deformity and severe abnormal gait, hyperlipidemia, cataracts and diverticulosis. *Brief in Support of the Appeal of the Decision of USCIS to Deny the I-601,* dated January 19, 2006. [redacted]Family Medicine, states that "...he [the applicant's spouse] needs help and assistance from his wife [the applicant], due to these conditions." *Letter from* [redacted] dated January 17, 2006. No evidence is provided that details exactly what assistance the applicant's spouse needs from the applicant and what hardship the applicant's spouse would face without the applicant to assist him. Moreover, the applicant's spouse has four children, three who are teenagers; counsel does not provide evidence that explains why the children would not be able to help the applicant's spouse due to his documented medical condition. Finally, the applicant's spouse has been employed since 1976 and currently holds the full-time position of Machine Operator; his medical condition clearly does not hinder his ability to work and support his family as the principal breadwinner.

In addition, counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant. *Supra* at 5. Counsel asserts that the applicant's spouse maintains lucrative employment in the United States and supports his wife and four children. *Supra* at 5. Counsel states that the applicant's spouse is over 60 years old and that he would be unable to find a job in Mexico at his age. The applicant's spouse states that "...I would not be able to live in Mexico because I could not find a job as a machine operator. It is the only thing I know how to do...." *Sworn Statement of*

[redacted] dated March 12, 2004. Counsel cites the poor health care and educational system and the high unemployment rate as further reasons that the applicant's spouse cannot relocate there. *Brief in Support.* at 5. The information provided by counsel with respect to Mexico's education and health care systems is very general in nature, and the article provided by counsel discussing unemployment in Mexico's labor force is from November 1994, approximately twelve years prior to the filing of the appeal. Moreover, counsel provides no evidence to substantiate that the applicant's spouse would not be able to assume a similar position, relatively comparable in pay and responsibilities, with the ability to obtain health care coverage, were he to relocate to Mexico. In fact, one could argue that his age would not be a hindrance as he has over three decades of experience in his field and thereby could be considered to be an asset to an employer in Mexico.

Counsel states that were the applicant to depart the United States, the applicant's spouse would suffer as he needs the applicant to help care for their four children. Counsel goes on to assert that if the applicant's spouse remains in the United States, he will have to maintain two households and pay someone to help care for the children. Counsel provides no evidence of what financial costs would be involved, to bolster the assertion that the issues of the applicant's departure are of an extreme nature. Moreover, counsel provides no explanation as to why the applicant would be unable to be employed in Mexico, thereby assisting the applicant's spouse financially in obtaining care for the children and maintaining two households.

Counsel then contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as he has resided in the United States for many years, and has strong connections to his family, the community and his work. *Brief in Support* at 5. The applicant's spouse has a mother who is a permanent resident of the United States and who counsel states is supported by the applicant and the applicant's spouse. In a translated letter written by the applicant spouse's mother, [redacted] states that "...I wouldn't know what to do without her [the applicant] because she takes me to the doctor and everywhere. I need a lot of help because I am elderly person and I have to go to the doctors sometimes..." *Statement from* [redacted], dated March 9, 2004. While the applicant's spouse may need to make other arrangements with respect to his mother's care, the applicant's spouse's mother is not a qualifying relative for purposes of an inadmissibility waiver and counsel has not established that any new arrangement would cause extreme hardship to the applicant's spouse. Moreover, although counsel asserts in her letter that the applicant's four U.S. citizen children will suffer hardship if the applicant is removed from the U.S., section 212(i) of the Act does not list children as qualifying relatives either for extreme hardship purposes.

Counsel asserts that the applicant's spouse is "...experiencing severe psychological hardship as a result of the possible forced deportation..." *Argument in Favor of Granting* [redacted] *Waiver*, dated March 12, 2004. Counsel has not provided any medical documentation from a mental health professional confirming this diagnosis, its treatment and its impact on his ability to live productively, either in the United States or in Mexico. 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 based on the record. 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, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to determine whether the district director erred in her analysis of the favorable and unfavorable discretionary factors in the applicant's case.

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. 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.