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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: MAY 02 2007

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, San Francisco, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain a benefit under the Act by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the mother of two U.S. citizen children. 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 family.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 24, 2004.

On appeal, counsel asserts that the district director misstated facts not in evidence, failed to consider the hardships cumulatively, and applied an unconscionable standard in evaluating extreme hardship. *Form I-290B*, received April 19, 2004.

The record includes, but is not limited to, counsel's brief, letters from two therapists, the applicant's spouse's statement, letters of support and country condition information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on January 22, 1997 and was apprehended at a border patrol checkpoint on January 24, 1997. The applicant presented a Mexican passport with a lawful permanent resident stamp to the receiving officer. The applicant had purchased the passport from an unidentified individual. By presenting false evidence of lawful permanent resident status to the officer, the applicant sought to obtain a benefit (i.e. the right to lawfully remain in the United States) by misrepresenting a material fact. Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.

Counsel asserts that the district director incorrectly relied on *Carnella-Munoz v. INS*, 627 F. 2d 1004 (9th Cir. 1980) in stating that "after-acquired family ties" need not be accorded great weight. *Brief in Support of Appeal*, at 1, dated April 19, 2004. "After-acquired family ties" refers to ties established after being placed in removal proceedings or after removal, therefore *Carnella-Munoz v. INS* is not pertinent as the applicant was never placed in removal proceedings or removed pursuant to a removal order from the United States.

Counsel also discusses case law related to the discretionary weight to be placed on the applicant's misrepresentation. *Id.* at 2. This analysis is only relevant upon a finding of extreme hardship. However, counsel properly asserts that the evidence should be considered cumulatively in extreme hardship analysis. *Id.* at 3.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's children is not a permissible consideration in a 212(i) waiver proceeding except as it may affect the qualifying relative. 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 (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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Mexico or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Mexico. The record does not reflect the applicant's spouse's ties to the United States, other than his immediate family. Counsel states that the applicant's spouse owns a home in the United States, and he is active in church and counseling activities. *I-601 Cover Letter*, at 3, undated. The applicant's spouse's therapist states that he has been living in the United States for fourteen years, he has excellent employment, he owns his own home and he provides health insurance for his family. *Therapist's First Letter*, at 1, dated September 9, 2003. The applicant's spouse states that denying his children access to education, medical and employment opportunities in the United States directly affects him as their father. *Applicant's Spouse's Statement*, at 2, dated October 4, 2003. Counsel states that the minimum wage in Mexico is four to

five dollars a day and the applicant's spouse would not be able to adequately support his family. *I-601 Cover Letter*, at 3. However, no evidence has been provided to establish that the applicant's spouse or the applicant could not find employment in order to support their family. Counsel states that Mexico has a high rate of crime, kidnapping and rape, and this would not be an ideal area in which to raise daughters. *Id.* at 4. The record reflects that the general standard of living in Mexico is lower than the United States and that crime continues at high levels, but it does not establish that the applicant's spouse would relocated to a location in Mexico where his children would be at risk. The AAO also notes that the applicant's spouse is originally from Mexico and is therefore, familiar with the language and culture. While separation as a result of removal commonly creates emotional stress and financial and logistical problems, the record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have relocated with family members upon removal. Based on the totality of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse's therapist states that the applicant's spouse would not be motivated to do anything positive with his life if his family went to Mexico, that he would no longer be able to jointly provide marital counseling to other Latinos with the applicant, and that he is currently suffering from neck pain, inability to sleep and lethargy. *Therapist's Second Letter*, at 1, dated April 12, 2004. The therapist states that the applicant's spouse's purpose for striving for anything is being taken away and that this type of depression is based on the rupture of values which permeate all behavior. *Id.* at 2. The record reflects that the applicant's spouse will face emotional difficulty without his family, however, the record does not demonstrate that the type of difficulty described is other than a common result of separation. The AAO notes that the therapist who evaluated the impact of the applicant's removal on her spouse does not recommend any additional treatment or medication for the depression she indicates is affecting the applicant's spouse. As such, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father 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(i) 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.