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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: PHOENIX, AZ Date: MAY 30 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 Acting District Director, Phoenix, Arizona, 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 admission into the United States by fraud or willful misrepresentation on February 6, 1996. The applicant is the son of a U.S. citizen father and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director found that although the applicant stated he had a lawful permanent resident mother, no documentation was provided to prove his mother's status. Thus, he only considered the hardship to the applicant's U.S. citizen father. The acting district director concluded that the documentation in the record, when considered in its totality, failed to show that the applicant's qualifying relative would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the Acting District Director*, dated September 7, 2005.

On appeal, counsel asserts that the applicant has demonstrated that he will suffer extreme hardship based on 9th Circuit Court of Appeals and Board of Immigration Appeals (BIA) case law. Counsel states that the Citizenship and Immigration Services (CIS) is misapplying the law and applying a higher standard then in cancellation of removal cases where the standard is exceptional and extreme hardship. Counsel states that the standard in suspension of deportation cases should be applied in the applicant's case. She also contends that CIS failed to consider fully all the evidence related to hardship and raised considerations irrelevant to the adjudication of the waiver. Finally, counsel states that CIS should exercise its discretion and grant the applicant's waiver application. *Form I-290B,* dated September 29, 2005; *Counsel's Brief*, dated April 17, 2007.

The record indicates that on February 6, 1996, at the Paso del Norte port of entry, the applicant falsely claimed that he was a U.S. citizen in an attempt to gain entry into the United States.

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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. The applicant's false claim to U.S. citizenship occurred on February 6, 1996 or before September 30, 1996. Therefore, he is eligible for a waiver under section 212(i) of the Act.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien himself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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. 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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 given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

Although counsel asserts that both of the applicant's parents are lawful permanent residents and will suffer hardship should he be removed from the United States, the AAO finds no documentation in the record on appeal that establishes the applicant's mother's lawful permanent residence. Therefore, the decision will focus only on the extreme hardship suffered by the applicant's father.

The AAO notes that extreme hardship to the applicant's father 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 his father in the event that he resides in Mexico. On appeal, counsel states that the applicant's father worries that if he relocates to Mexico, he would not be able to find employment and would not be able to support his family. She asserts that, in Mexico, the applicant's father would not earn even ten percent of his current income and would have no "future employability." Counsel states that the applicant's father suffers from high cholesterol, diabetes, arthritis and gout, and would not have health insurance or access to medical facilities in Mexico, but have to depend on the Red Cross or public services that might not be sufficient for his needs. Counsel reports that the applicant's father has no immediate family members left in Mexico.

While the AAO notes counsel's assertions regarding the hardship that would befall the applicant's father if he returned to Mexico with the applicant, it does not find the evidence of record to support them. The record offers no proof that the applicant's father would be unable to find employment in Mexico to support his family. While a letter from the applicant's doctor indicates that he also cares for the applicant's parents and that they have chronic health problems, he does not identify these health problems. *Letter from Dr.* [redacted] dated July 10, 2003. There is no other documentation in the record that relates to the health of the applicant's father or that offers evidence that his medical conditions could not be adequately treated in Mexico. With regard to counsel's claim that the applicant's father has no immediate family members left in Mexico, the AAO notes that the record contains a Biographic Information sheet, Form G-325A, for the applicant's father that indicates his mother continues to live in Mexico. Thus, the record does not establish that relocation to Mexico would cause extreme hardship to the applicant's father

The second part of the analysis requires the applicant to establish extreme hardship in the event that his father remains in the United States. The record indicates that the applicant lives with his father, mother and two younger siblings. The applicant's father states that he would suffer extreme hardship if he were separated from the applicant for various reasons. He states that he has been diagnosed with high cholesterol, diabetes, arthritis and gout. *Father's Letter*, dated July 10, 2003. He states that his medical problems cause him physical pain and frequent medical visits. He states that he is unable to work because of this pain and the applicant assists him with the household duties and taking him to the doctor. The applicant's father adds that his wife cannot help him with these things because she suffers from migraines and a nervous system disorder. *Id.* In addition, the father states that the applicant helps with raising his two younger siblings and helps with the household finances. The applicant's father asserts that he would not be able to pay all of the household bills without the help of the applicant. Finally, the applicant's father states that living without the applicant would be devastating and that he has never been separated from the applicant for more than a few weeks.

In support of these assertions, the applicant submitted the previously noted letter from his family's doctor. The doctor's letter states that the applicant's parents have chronic health problems that require the assistance of the applicant. The doctor also states that he believes it would be a medical hardship for the applicant's parents if the applicant were removed. *Letter from Dr.* [redacted], dated July 10, 2003. Although the input of any health professional is respected and valuable, the AAO notes that the submitted letter does not state what medical problems the applicant's parents suffer from, any debilitating symptoms that have resulted from these problems, how frequently they require medical attention, and if they rely on the applicant to maintain their well being. The vagueness of the doctor's statement renders his opinion speculative and diminishes the letter's value in determining extreme hardship. The applicant also submitted a deed to property in the applicant's name. This deed shows that the applicant owns property in the United States, but does not show that his removal would result in his family not being able to keep the property and that not keeping the property would cause them extreme hardship. No evidence was submitted concerning the applicant's ability to work or the income and expenses of the family. On appeal, counsel also contends that the applicant's parents are suffering from depression as a result of their son's current situation. Again, however, the record offers no evidence, i.e., a psychological or other medical evaluation, that would support counsel's assertions regarding the mental health of the applicant's father. Therefore, the AAO finds that the current record does not establish that the applicant's father would suffer extreme hardship as a result of the applicant's removal from 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.

The AAO notes that the applicant submitted nine letters from members of the community all stating that he is an exemplary member of their community and a very generous, caring and responsible person. However,

because a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father, the applicant is statutorily ineligible for relief. Therefore, no purpose would be served in discussing whether he 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.