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

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PUBLIC COPY

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FILE: [redacted] Office: PHOENIX, ARIZONA Date: NOV 06 2007
[relates]
[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 Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed January 13, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On September 21, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

The record reflects that 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 enter the United States using a Mexican passport and B2 nonimmigrant visa is someone else's name. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband and three United States citizen daughters.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Acting District Director's Decision*, dated December 14, 2005.

On appeal, the applicant, through counsel, asserts that the Acting District Director "failed to consider each and every factor...in determining extreme hardship wherein a factor alone may not constitute extreme hardships but the aggregate or cumulative effect would meet the extreme hardship requirement." *Form I-290B, supra*. Additionally, counsel contends that the Acting District Director "erred in holding that the relationship, family and property ties are after acquired equities and cannot be given great weight." *Id.*

The record includes, but is not limited to, counsel's brief attached to the Form I-601, statements by the applicant, her husband, and two children, and an evaluation on the applicant and her family by [redacted] dated September 14, 2005. 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, that:

> (i) In general.-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.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States without inspection in January 1981. At some point, the applicant departed the United States and reentered the United States in June 1987. On August 28, 1987, the applicant married [redacted] a lawful permanent resident, in Arizona. On June 7, 1988, the applicant filed an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700). On February 14, 1990, the applicant's daughter, [redacted] was born in Arizona. On July 10, 1991, the applicant's Form I-700 was denied. On October 4, 1991, the applicant filed a Notice of Appeal (Form I-694). On November 27, 1993, the applicant's daughter, [redacted] was born in Arizona. On March 21, 1996, the AAO dismissed the applicant's appeal because it was untimely. At some point, the applicant again departed the United States and on December 8, 1997, the applicant attempted to reenter the United States by presenting a Mexican passport and B2 nonimmigrant visa in the name of [redacted]. On the same day, the applicant was removed from the United States. The applicant then reentered the United States on the same day. On January 12, 1998, the applicant's husband filed a Form I-130 on behalf of the applicant, which was approved on September 30, 1998. On November 3, 1998, the applicant's daughter, [redacted], was born in Arizona. On June 2, 2000, the applicant's husband became a United States citizen. On May 11, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 14, 2005, the applicant filed a Form I-601. On December 14, 2005, the Acting District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the

only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's family will suffer extreme hardship if she is removed from the United States. *Form I-290B, supra.* Counsel states the applicant's husband "cannot move to Mexico; as a 41 year old and U.S.C. who has lived in the United States since he was 15 years and with expertise only in the American workforce, he will not be able to find a job, nor will he have the ability to compete in a workforce that is foreign to him. He will not be [sic] way of financially support [sic] his family." *Counsel's statement attached to Form I-601,* page 3, dated October 13, 2005. The AAO notes that the applicant's husband is a maintenance supervisor, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the applicant's husband is a native of Mexico, who spent the majority of his formative years in Mexico, he speaks Spanish, and it has not been established that the applicant and her husband have no family ties in Mexico. The applicant's husband states that without the applicant he "will definitely be devastated and terrified because [he doesn't] know what [he'll] do without her with [them] because right now [his] daughters our [sic] in the age of developing and growing and just experiencing new things." [redacted] undated. Counsel states the applicant's husband would suffer psychologically if the applicant were removed from the United States. *Counsel's statement attached to Form I-601,* page 3, *supra.* [redacted] and [redacted] state the applicant's husband is "extremely dedicated to [the applicant]; separation from her would prove emotionally devastating." *Evaluation on the applicant and her family,* page 11, dated September 14, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's family and the counselors. There was no evidence submitted establishing an ongoing relationship between the counselor's and the applicant's family. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the counselors' findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [redacted] and [redacted] additionally state the applicant's children will suffer "extremely severe emotional, academic and physical hardships," if they are separated from the applicant. *Id.* at 12-13. The applicant's daughter, [redacted], states they "would definitely suffer without [the applicant] to our sides." *Letter from* [redacted], dated August 30, 2005. The applicant's daughter, [redacted] states she does not "know what [she'll] do without [the applicant] by [their] sides." *Letter from* [redacted], dated September 6, 2005. As noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. Additionally, the AAO notes that the applicant has not

demonstrated that her children could not join her in Mexico. It has not been established that the applicant's children, who are 8, 14, and 17, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO notes that [redacted] and [redacted] the applicant's children, speak and have basic comprehension skills of the Spanish language. *See Evaluation on the applicant and her family*, pages 2-7, *supra*. The AAO finds that counsel has failed to establish extreme hardship to the applicant's United States citizen husband if he accompanies the applicant to Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States. Counsel states "[i]f [the applicant's husband] were separated from his life and identity which he has established in the United States, he would be psychologically vulnerable to the impact of such a dramatic change of the environment." *Counsel's statement attached to Form I-601*, page 3, *supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, [redacted] and [redacted] state "[i]f the [applicant's children] accompany [the applicant] to Mexico, they will be denied the quality education to which they are entitled as US citizens." *Evaluation on the applicant and her family*, page 13, *supra*. However, as United States citizens, the applicant's children are not required to reside in Mexico. Counsel contends that the applicant's husband will suffer hardship because he will "be solely responsible for his USC children." *Form I-290B*, *supra*. The AAO notes that all of the applicant's husband's family resides in the United States and there was no documentation submitted establishing that they could not help the applicant's husband with caring for the children. Additionally, the applicant's daughter, [redacted] is in her last year of high school, and it has not been established that she needs someone to take care of her. Counsel states the applicant contributes financially to the household and without her contribution, the applicant's husband would lose everything they own. *Counsel's statement attached to Form I-601*, page 7, *supra*. The AAO notes that it has not been established that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan*, *supra*, the Ninth Circuit Court of Appeals 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 recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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(a)(6)(C)(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.