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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: NOV 06 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 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 attempted to procure entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant attempted entry to the United States on or around July 23, 1999 using a counterfeit Mexican passport containing a counterfeit permanent resident stamp. The applicant is the son of lawful permanent resident parents 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 his parents.

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 August 31, 2005.

In support of the appeal, counsel for the applicant submits a brief, dated October 24, 2005; evidence of the applicant's parent's lawful permanent resident status; a letter from the applicant's mother; a letter from Wenatchee Family Practice confirming that the applicant's parents are patients of the facility; evidence of financial contributions made by the applicant to his parents; evidence of the applicant's business ownership; letters from the applicant's siblings and evidence of their lawful status in the United States; and letters from the applicant's extended family and friends. 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...

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. 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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

To begin, the record contains references to the hardship that the applicant's two U.S. citizen children would suffer if the applicant were to depart the United States. As stated by [redacted] one of the applicant's children, the applicant "...takes me to school and he picks me up. He buys me shoes. He takes me to eat to McDonald's. He takes me to Karate and he bought me a computer and a game boy. He loves me a lot, if you take him away, I will not have a daddy. Please I ask you do not take me away from him and I am going to have a baby brother and he needs to take care of the baby..." *Letter from* [redacted] dated September 21, 2005. Counsel further asserts that if the applicant is removed, the applicant "...will not be able to make the mortgage payments and he faces losing the house where his children live. Mr. [redacted][the applicant] also provides health insurance for his family and his departure would expose his children to being without the much-needed medical insurance..." *Brief in Support,* dated October 24, 2005.

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's parents are the only qualifying relative, and hardship to the applicant or his children cannot be considered, except as it may affect 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).

Counsel further contends that the applicant's parents would suffer extreme financial hardship were the applicant removed from the United States. As stated by counsel, the applicant's parents "...are an elderly couple who are both legal permanent residents and who have a very close connection with their son. Mr.

[redacted] [the applicant] provides his parents with substantial financial and emotional support. If Mr. [redacted] is removed to Mexico, this elderly couple would not only lose their son, but they would also lose the main source of financial support.. [redacted] and [redacted] [the applicant's parents's] health is precarious and in their old age, have been under the regular care of physicians..." *Brief in Support,* at 3.

The applicant's mother further details the hardship she will face if the applicant is removed. As she states, "...I am [redacted] the mother of [redacted] [the applicant]. The motive of this letter is to beg you to please grant my son the Waiver. He always helps my husband and I, financially and is concerned with our doctor visits. Every month he sends us $300.00-$400.00 dollars that is one reason why if he is sent to Mexico we will suffer a lot...Even though he is not with us, we are in contact and he often visits us..." *Letter from* [redacted] dated September 17, 2005.

The record contains no corroborating evidence to establish that the applicant's removal would cause the applicant's parents extreme hardship. Although counsel references the low minimum wages in Mexico in her brief, the information provided is not specific to the applicant and does not detail why the applicant, a taco stand owner in the United States, would be unable to find a similar position in Mexico that would allow him to assist his family in the United States financially. Nor has any evidence been provided regarding the applicant's parent's current financial situation and their needs, to establish that without the applicant's continued financial support, their hardship will be extreme. 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* [redacted] 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, no documentation has been provided that details the applicant's parents' medical conditions, their short and long-term treatment plans, the gravity of their medical conditions, and what assistance they need from the applicant in particular. The letter provided from Wenatchee Family Practice merely states that the applicant's parent's have been patients of the facility since June 2004. *Letter from Wenatchee Family Practice,* dated September 19, 2005. As such, the record fails to establish that the applicant's parent's continued medical care and survival directly correlate to the applicant's physical presence in the United States.

Finally, the record indicates that the applicant's parents have three daughters that reside legally in the United States. No evidence has been provided by counsel to explain why the applicant's parents' daughters would be unable to assist the applicant's parents with respect to their financial and medical care, were the applicant removed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of* [redacted] 2 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the applicant's parents may need to make alternate arrangements with respect to their finances and their continued medical care, it has not been established that any new arrangements would cause extreme hardship to the applicant's parents. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal 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 removal 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 extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, no reasons have been provided by counsel for why the applicant's parents are unable to accompany the applicant to the Mexico, or any other country of their choosing.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his lawful permanent resident parents would suffer extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his lawful permanent resident parents would suffer extreme hardship were they to relocate to another country with the applicant were he removed. 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.

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.