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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: CHICAGO, IL Date: SEP 20 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, 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, pursuant to the record, attempted entry to the United States on January 22, 1994 as a B-2, visitor for pleasure. Despite the applicant's initial assertions to the port of entry officer that she was coming to the United States for a temporary visit, the record reveals that during secondary inspection, the applicant admitted that she intended to reside in the United States with her spouse, a lawful permanent resident, who she married in September 1992 and her son, a U.S. citizen, born April 20, 1993, and apply for permanent residency. The applicant was found inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having procured entry into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse and two U.S. citizen children.

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...

Moreover, the district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated July 22, 2004.

In support of this appeal, counsel for the applicant submits the following documents: a legal memorandum; copies of the applicant's two U.S. citizen children's birth certificates; a copy of the applicant's spouse's permanent resident card; and two letters from the applicant's spouse's physicians, outlining the applicant's spouse's medical conditions and current medications. The entire record was reviewed and considered in rendering this decision.

To begin, references are made to the applicant's two U.S. citizen children and the hardship they would face were the applicant removed. As stated by the applicant, "...My sons being born and raised here have become accustomed to the way of life here. It would devastate them to have to change their way of living from one day to the next..." *Affidavit of* [redacted] dated May 29, 2003. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(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 herself a permissible consideration under the statute. In the present case, the applicant's spouse, a lawful permanent resident, is the only qualifying relative, and hardship to the applicant or their 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).

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.

Counsel contends that the applicant's spouse suffers from numerous medical conditions that require the applicant's assistance. [redacted] a physician that has been treating the applicant's spouse since 2002, states that the applicant's spouse suffers from Diabetes Mellitus Type II, Hypercholesterolemia, Fatty Liver Disease and Osteoarthritis. *Letter from Dr.* [redacted] *Catholic Health Partners*, dated May 13, 2003. [redacted], a physician treating the applicant's spouse since August 2004, confirms Dr. [redacted]s diagnoses, also adds that the applicant's spouse suffers from Insomnia, outlines the medications taken by the applicant's spouse for his medical conditions and states that the applicant's spouse "...must check with the clinic every 6 months to do a laboratory examination on Cholesterol, Diabetes and Liver. Further more [redacted] [the applicant's spouse] must be in a strictly [sic] diet for his health, now Mr. [redacted] might need help with his diet and pills therefore his wife [redacted] [the applicant] could help Mr. [redacted]..." *Letter from* [redacted] *Ash Tree Medical Clinic,* dated September 8, 2005. The letters provided do not explain each illness nor detail the gravity of the applicant's spouse's specific situation. According to the letters provided, the applicant's spouse must take a number of medications and visit a medical clinic twice a year to handle his medical conditions properly. The only specific reference made regarding the applicant's involvement with the applicant's spouse's medical situation is [redacted] statement that the applicant may assist with the applicant's spouse's diet and pills. Although the applicant's spouse may need to make alternate arrangements with respect to his own medical care and daily diet were the applicant removed, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The applicant's spouse further states that without the applicant's presence, he will not be able to care for their two children. As referenced in his affidavit, "...aside from maintaining all the household chores, my wife [the applicant] also cares for our children...She takes them back and forth to school, attends school meetings and also helps them with their homework. Our sons [redacted] who is 8 and Joaquin who is 10 years of age are still too young to care for themselves. I need my wife to help me..." *Affidavit of* [redacted] dated May 29, 2003. The letters provided by the applicant's spouse's physicians do not reference any daily issues with the applicant's spouse's health that would hinder his ability to care for his two children. Counsel has not provided any corroborative documentation to establish that the applicant's spouse would experience extreme hardship with respect to caring for his children were the applicant removed. Although the applicant's spouse may need to make alternate arrangements with respect to his children's daily scholastic and emotional care and the household's upkeep were the applicant removed, it has not been established that such arrangements would cause the applicant's spouse extreme hardship. Moreover, it has not been established that the applicant, were she removed, would be unable to obtain employment in Mexico and assist financially in supporting her spouse and sons in the United States should alternate childcare arrangements need to be made.

Alternatively, no explanation is given for why the children would not be able to accompany the applicant to Mexico were the applicant's spouse's medical situation to worsen, thereby rendering him incapable of caring for his sons. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.

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, the applicant has not asserted any reasons why the applicant's spouse is unable to relocate to Mexico, his birth country, to accompany the applicant were she removed.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship if she were not permitted to remain in the United States, and moreover, the applicant has failed to show that her lawful

permanent resident spouse would suffer extreme hardship were he to relocate to Mexico to accompany the applicant. 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.