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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ST. PAUL, MINNESOTA Date: APR 01 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having entered the United States through fraud or the willful misrepresentation of a material fact. The applicant is the daughter of a lawful permanent resident (LPR) and seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.[1]

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her lawful permanent resident father or that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service July 20, 2006.

On appeal, counsel asserts that the applicant's LPR father will suffer extreme hardship because of the severe and overwhelming anxiety he will experience as a result of her removal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as set forth in section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 . . . .

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[1] Although counsel states on appeal that the applicant is appealing the denial of her I-485 Adjustment of Status Application, the AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). Therefore, the AAO will consider only the denial of the applicant's waiver application.

The record indicates that the applicant used another individual's Form I-551, Resident Alien Card, to enter the United States in 2001. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for having entered the United States by fraud or willfully misrepresenting a material fact. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case, the lawful permanent resident father of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

> 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence:

1. Statement from [redacted] of West Side Community Health Services stating that the applicant is a prenatal patient at the facility, is Rh negative and will require the drug RhoGam during and after her pregnancy. A printout detailing information on Rh incompatibility has also been provided.
2. World Health Organization web page printout detailing birth statistics for Mexico and one page of a United Nations Children's Fund report on children in the Mexican workforce and poverty in Mexico.
3. Statement from the applicant's mother asserting that the medication needed by her daughter during her pregnancy may not be available where she would have to live if she returned to Mexico and that there is no hospital where she would have to live.

4. Statement from the applicant's father stating that he would be extremely sad if his daughter had to return to Mexico, that she would be isolated without financial and emotional support in Mexico, and that she watches after her siblings.
5. Pay statements and tax forms for the applicant's LPR father and her mother.
6. Statement from the applicant asserting she cannot return to Mexico because she would have no financial support for her baby or its education, that she has no family in Mexico, that it would be very painful for her and her family as she is the caretaker for her siblings while her parents work.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the main cause of any hardship to the applicant's LPR father will be the severe and overwhelming anxiety he will feel if his daughter is removed to Mexico. Counsel contends that sending a defenseless, pregnant woman to Mexico without her family will result in extreme emotional hardship to her father and points to the applicant's high-risk pregnancy, her lack of financial resources, the high unemployment rates for women in Mexico and the lack of safety there to support his claim. Counsel also contends that this family of migrant workers will not be able to work as efficiently or earn as much in the applicant's absence as another family member will have to stay with the children. In an August 15, 2006 affidavit, the applicant's mother states that her husband cannot sleep at night because of worry over their daughter's possible removal. The record also contains an August 15, 2005 affidavit from the applicant's father stating that he will feel extremely sad if his daughter is removed to Mexico because she will not have the means to live and the family will not be able to send her money. He indicates that he will feel anxious and will have no peace of mind if the applicant is in Mexico.

While the AAO acknowledges the concerns expressed by the applicant's parents, the record fails to provide the documentary evidence necessary to establish that the applicant's father's would suffer extreme emotional hardship if the applicant were removed to Mexico, e.g., a psychological evaluation of the applicant's father by a licensed medical professional. Moreover, with the exception of the medical records documenting the applicant's RH-sensitive pregnancy, the AAO notes that the record does not include sufficient documentary evidence to support counsel's claims regarding the country conditions that would be encountered by the applicant in Mexico or the financial impact of her removal on her family. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not establish that the applicant's father would suffer extreme hardship if the applicant's waiver application were to be denied and he remained in the United States.

With regard to the hardship that would be suffered by the applicant's father upon relocation to Mexico, the record is silent. Neither counsel nor the applicant's father address what impact relocation would have on him. Accordingly, the AAO is unable to find that the applicant's father would suffer extreme hardship if he returned to Mexico to reside with the applicant.

The record, viewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's father would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's father will suffer emotionally as a result of the applicant's inadmissibility, but the record fails to distinguish his hardship from that normally associated with removal. Accordingly, it does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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 this case, the applicant has failed to establish extreme hardship to her lawful permanent resident father. As the applicant is 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 rests 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.