U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ Date: DEC 03 2009

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:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 U.S. citizen husband.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated December 6, 2006.

On appeal, the applicant's husband asserts that he will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband*, submitted January 4, 2007.

The record contains a statement from the applicant's husband and information regarding the applicant's attempted entry to the United States by misrepresenting material facts. The applicant further provided documents in a foreign language. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, 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.

Section 212(i) of the Act provides, in pertinent part, 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[.]

The record reflects that on June 6, 2004 the applicant attempted to enter the United States at the Santa Teresa, New Mexico port of entry with a Form DSP-150 laser visa. She initially represented that she intended to enter for a three-day period to travel to Ruidoso, New Mexico. However, upon further inspection, documentation was discovered in her possession that clearly showed that she had previously spent significant time in Las Vegas, Nevada, including a prior Form I-94, Departure Record, that she had not submitted upon exiting the United States, a bank debit card issued in her name from a Las Vegas bank, and two receipts showing that she transferred funds from the United States to Mexico. The applicant admitted that she had married her husband in November 2003 and they were residing in Las Vegas, and that her true intention was to return there to reside for an indefinite period. Accordingly, the applicant misrepresented her true intentions for entering the United States in order to procure admission. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 applicant experiences due to inadmissibility is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 pursuant to section 212(i) of the Act. 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.

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).

On appeal, the applicant's husband asserts that he will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband*, submitted January 4, 2007. He states that he is a U.S. citizen and he has resided in the United States since his birth. *Id.* at 1. He indicates that he has custody of his two children from a prior marriage, and that they recognize the applicant as their mother. *Id.* at 2. He suggests that he will suffer hardship due to his children's loss of the applicant's presence. *Id.*

The applicant's husband explains that he attempts to give his children stability by bringing the family together through religion, and that the applicant is an invaluable partner in his activities with his church. *Id.* He asserts that he would not be able to tend to his community activities in the applicant's absence due to concerns with raising his children. *Id.* at 3.

The applicant's husband indicates that he may develop psychological problems should he reside in the United States without the applicant that could be expensive to treat and result in extreme hardship to him. *Id.*

The applicant's husband provides that he has a job in the United States as a construction contractor, but that he would have difficulty obtaining employment should he relocate to Mexico due to age discrimination. *Id.* at 4.

The applicant's husband explains that his children are at an age when many Mexican-American children leave school to help out with their family's income, and that if his children leave school they will condemn themselves to poor economic conditions should they return to the United States. *Id.*

The applicant's husband asserts that all of the stated hardships considered in aggregate constitute extreme hardship. *Id.* at 5.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from residing in the United States. The applicant has not shown that her husband will experience extreme hardship should he remain in the United States. The applicant's husband expressed that he will endure emotional hardship if he lives separately from the applicant, and that he may develop psychological problems that could be expensive to treat and result in extreme hardship to him. The AAO acknowledges that spouses often experience significant emotional consequences when separated. However, the applicant has not distinguished her husband's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility. Federal court and administrative decisions have 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 applicant's husband asserts that the applicant assists him with caring for his two children. Yet, the applicant has not shown that her husband is unable to care for his children in her absence. The applicant has not discussed whether her husband cared for his children before she and he were married or began residing together, thus the AAO is unable to determine if he faced unusual challenges as a single parent in the past. The applicant has not stated her husband's income or expenses, thus the AAO is unable to determine if he is capable of hiring any needed childcare

services. The applicant's husband indicated that his children are in high school, and he has not stated or shown that they require constant parental supervision.

The AAO acknowledges that the applicant's husband's children may face emotional hardship if they remain separated from her. However, direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. Regardless, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO recognizes that the applicant's children will face challenges should they reside separately from the applicant, and that their hardship will have an emotional impact on the applicant's husband. However, the applicant has not shown that they will face unusual circumstances that raise her husband's emotional hardship to extreme hardship.

The applicant's husband indicated that he will be unable to continue his religious and community activities in the applicant's absence due to his parental duties. However, the applicant has not provided sufficiently detailed explanation to show that her husband would be compelled to cease his religious or community participation without her assistance.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant's husband expressed that he will experience extreme hardship should he relocate to Mexico to maintain family unity. The applicant's husband stated that he would have difficulty securing adequate employment in Mexico due to his age, thus he would encounter economic difficulty. Yet, the applicant has not provided any explanation or documentation to show her or her husband's job skills, or to support that individuals in their forties are discriminated against in the Mexican job market. Nor has the applicant stated her husband's likely income needs or income in Mexico.

The applicant's husband expressed concern for his two children due to adjusting to Mexico and cultural practices that might discourage them from continuing in school. It is evident that relocating to a foreign country during the high school years may pose emotional hardship for a young person. Yet, the applicant has not shown that her husband's children would in fact leave school, or that they have unusual needs or a lack of adaptability.

The AAO acknowledges that the applicant's husband would face significant emotional challenges and some economic impact should he relocate to Mexico, and such hardship would be compounded by the challenges experienced by his two children. Yet, the applicant has not submitted sufficient evidence or explanation to show that her husband's hardship in Mexico would rise to the level of extreme hardship.

All elements of hardship to the applicant's husband have been considered individually and in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that denial of the present application "would result in extreme hardship" to her husband, whether he resides in the United States or relocates to Mexico to maintain family unity, as required for a waiver

under section 212(i) of the Act. 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 regarding a 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.