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U.S. Department of Homeland Security
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]

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FILE: [redacted] Office: LOS ANGELES (SANTA ANA) Date: JUN 25 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 PETITIONER:

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).

Ellen C. Johnson

John F. Grissom,
Acting 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 last admitted to the United States on December 26, 2005 as a visitor for pleasure. She was found to be inadmissible 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 procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks 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 spouse and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated November 9, 2006.

On appeal, the applicant asserts that her husband would suffer extreme hardship if he were separated from the applicant or if he relocated to Mexico. Specifically, the applicant's husband states that the applicant and their son would not have access to adequate medical care in Mexico due to the high cost of medical care and the inability of the applicant to obtain employment there, and further states that the employment-based medical insurance he provides for them would not be available if they relocated to Mexico. *See Letter from* [redacted] dated December 5, 2006. He further states that the applicant has suffered from ulcers and nervous break-downs due to high stress in the past, and he fears that she may be suffering from post-partum depression. *See Letter from* [redacted] He states that the applicant and his son would be exposed to dangerous crime due to drug-related violence in Tijuana, where the applicant used to reside. *See Letter from* [redacted] He additionally states that he and the applicant did not willfully misrepresent their intentions when they entered the Untied States at San Ysidro, California on December 26, 2005, but only intended to renew her status and prevent her from remaining in the United States illegally. *See Letter from* [redacted] In support of the waiver application and appeal, the applicant submitted letters from her husband and her husband's family members, information on conditions in Mexico, and family photographs, including photographs of her wedding and of their newborn son. 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:

> (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:

> **(1)** The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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 contains references to hardship the applicant's child would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(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 deportation is irrelevant to section 212(i) waiver proceedings; 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Mexico who has resided in the United States since July 20, 2005, when she entered as a visitor for pleasure. The applicant married her husband, a native and citizen of the United States, on September

3, 2005 and he filed a Petition for Alien Relative on her behalf on October 21, 2005. The applicant was again admitted to the United States as a visitor for pleasure on December 26, 2005 and is inadmissible to the United States for willful misrepresentation of a material fact, her entry into the United States as a visitor when she intended to reside permanently in the United States as evidenced by the filing of an immigrant petition on her behalf. The record further reflects that the applicant's husband is a thirty-one year-old native and citizen of the United States. The applicant and her husband currently reside in Buena Park, California with their son, who was born in November 2006.

The applicant's husband states that the applicant and his son would not have access to adequate medical care in Mexico because he could not continue providing them with medical insurance if they departed the United States, and they would be unable to pay for health care in Mexico due to the high costs. In support of these assertions the applicant submitted articles on health care and social security in Mexico. One articles appears to have been downloaded from a website called "Guide2Mexico" and discusses health care in Mexico in the 1990's. It is of limited probative value because it addresses conditions in Mexico before 1996 rather than recent conditions there and because the source of the information is not clear from the record. The other article discusses access to health care in San Diego and in Tijuana, Mexico and issues concerning the spread of communicable diseases between the two communities and relates more to the public health concerns of travel between the two communities rather that the quality or availability of medical care in Mexico.

The applicant's husband claims that lack of access to medical care would result in extreme hardship to him and his family members if the applicant were removed to Mexico. Although the emotional effects of a serious medical condition of a qualifying relative's child or other close relative could be considered in assessing a claim of extreme hardship, the evidence in the present case does not establish that the applicant or her son is suffering from such a condition. The applicant's husband makes no claim they their son has any medical problems, and although he states that the applicant has suffered from nervous breakdowns and possibly post-partum depression, no evidence was submitted to support these assertions. 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)). Further, as noted above, the documentation submitted concerning medical care in Mexico is of limited probative value.

Letters submitted by the applicant's husband's parents and brother state that the applicant's husband would suffer emotional hardship if he were separated from the applicant. There is no evidence, however, that the applicant's husband would suffer emotional hardship if she relocated to Mexico and he remained in the United States, such as evidence concerning his mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable

hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. Further, although the applicant's husband states that the applicant and their son would be exposed to the dangers of violent crime in Tijuana if they were to relocate there, no documentation was submitted to support this assertion

The applicant's husband claims that lack of access to medical care would result in extreme hardship to him and his family members if the applicant were removed to Mexico. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. There is no assertion made that the applicant's husband suffers from any serious medical condition, and no further evidence was submitted concerning potential hardships to the applicant's husband if he were to relocate to Mexico. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

Based on the evidence on the record, the emotional hardship and other difficulties that the applicant's husband would suffer if the applicant were removed to Mexico appears to be the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act.

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.