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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: LOS ANGELES Date: MAR 03 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:

[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, 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 first attempted to enter the United States on 1978 by presenting a fraudulent birth certificate indicating that she was born in the United States. She was found to be excludable and was returned to Mexico the same day. The applicant last entered the United States in 1991 as a visitor for pleasure and has resided in the United States since that date. She 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 sought admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. She 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 husband and daughter.

The district director 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 District Director*, dated September 30, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding that the applicant attempted to enter the Untied States using someone else's birth certificate in 1999, when this incident occurred on March 18, 1978, when the applicant was fourteen years old. *See Counsel's Brief in Support of Appeal* at 2. Counsel further asserts that USCIS erred in finding the applicant inadmissible under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship, when this claim was made prior to September 30, 1996, and section 212(a)(6)(C)(ii) applies only to claims made after that date. *Id.* Counsel additionally asserts that since the applicant was fourteen years old at the time she attempted to gain entry to the United States by presenting someone else's birth certificate, she "did not have the maturity or ability to knowingly, voluntarily, intelligently commit the willful act of fraudulent misrepresentation." *Brief at 4.* Counsel additionally claims that there is extreme hardship in the present case because the applicant was denied admission "based on allegedly committing a crime for which she was never prosecuted," and further states that USCIS failed to address the fact that the law at the time the act took place allowed for relief without proof of extreme hardship. *Id.* On appeal counsel requested 30 days in order to submit a brief and/or additional evidence. As of this date, over two years later, no additional statement or evidence has been submitted. In support of the waiver application, counsel submitted an affidavit from the applicant, a letter from the applicant's husband, and a copy of their marriage certificate. 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.

Counsel asserts that USCIS erred in determining that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act because that ground of inadmissibility does not apply to false claims of U.S. citizenship made before September 30, 1996. Although the applicant cannot be found to be inadmissible under section 212(a)(6)(C)(ii) of the Act for a misrepresentation made in 1978, section 212(a)(6)(C)(i) does not contain such a time limitation and is applicable to this conduct. Counsel further argues that the applicant was not able to form the requisite intent to commit fraud or willful misrepresentation because she was only fourteen years old at the time she sought entry to the United States by presenting a birth certificate that did not belong to her.

The record includes an affidavit from the applicant in which she describes her attempt to enter the United States on March 18, 1978, about a month before her fifteenth birthday. The affidavit states that she wanted to visit the United States for the weekend with some relatives and her boyfriend. ***See Affidavit of*** [redacted] dated September 1, 2005. The applicant further states that her mother did not give her permission to go, and a friend of hers gave her a birth certificate and told her to use it to cross the border. *Id.* The applicant further states: "I was stopped by the Border Patrol and questioned by two different officers. They asked me a lot of questions and determined **that this birth certificate did not belong to me.**" *Id.* The AAO notes that the birth certificate presented by the applicant contained the name [redacted], born on May 16, 1962 in Orange County, California. The applicant states that she traveled to the United States against her mother's wishes and presented a birth certificate under a different name to immigration officials when inspected at the border. The evidence on the record establishes that the applicant knowing and voluntarily presented a birth certificate that she knew did not belong to her in an attempt to gain entry to the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The record contains references to hardship the applicant's daughter 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 for a waiver under section 212(i) of the Act. In the present case, the only qualifying relative for the waiver under section 212(i) of the Act is the applicant's husband, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 forty-five year-old native and citizen of Mexico who has resided in the United States since 1991, when she was admitted as a visitor for pleasure after presenting a border crossing card. The applicant's husband, whom she married on October 21, 1997, is a fifty-four year-old native and citizen of the United States. The applicant resides in Northridge, California with her husband and daughter.

Counsel for the applicant asserts that the present case involves extreme hardship, and the applicant's husband states that he would suffer emotional and financial hardship if the applicant were removed from the United States. He states that he would lose his home and the business he and the applicant operate together because the business, a Hispanic wholesale video business with an almost entirely Hispanic customer-base, would fail without the applicant's "language and public relations abilities." *Undated letter from* [redacted]. The AAO notes that no documentation concerning the business they operate or the family's expenses was submitted to support an assertion that the applicant's husband would suffer financial hardship or lose their home if the applicant were removed from the United States. 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, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Any financial impact to their business resulting from the applicant's departure therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife and daughters. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband further states that he loves the applicant and would become very depressed if he were separated from her, and he relies on her for stability and as the "cornerstone" of their home. The applicant's husband states that he would suffer emotional hardship due to separation from the applicant, but there is no evidence provided concerning his mental health or the potential emotional or psychological effects of the separation. 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.* 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 wife 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.

There is no evidence on the record to establish that the applicant's husband would experience any hardship beyond the type of hardship that a family member 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). No information or evidence was submitted to support a claim that the applicant's husband would suffer extreme hardship if he relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he moved to Mexico.

In this case, the record does not contain sufficient evidence to show that any 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.