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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: HIALEAH, FL Date: OCT 23 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 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 Field Office Director, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States pursuant to 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 a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. Citizen and the father of two U.S. Citizens. He 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 his family.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, at 4-5, dated August, 7, 2009.

On appeal, counsel asserts that the trials that the applicant's spouse would experience in the event that the applicant is not permitted to reside in the United States rise to the level of extreme hardship. *Brief in Support of Appeal*, at 8, dated August 23, 2009.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, psychological evaluations of the applicant's spouse and daughter, country conditions information on Nicaragua, and employer letters for the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant made a material misrepresentation to a U.S. government official when he applied for a visitor's visa in 1997. Specifically, the applicant failed to disclose a controlled substance arrest and a subsequent conviction, which has since been vacated on the basis of procedural defect. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act .

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 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 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case and the totality of the hardship factors will be considered. The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Nicaragua or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Nicaragua. Counsel states that the applicant's spouse obtained asylum in the 1980s, she cannot be expected to permanently return to a country from which she fled, and this is especially true considering the Sandinistas' return to power. *Brief in Support of Appeal,* at 1, 8. The applicant's spouse states that her son from a prior relationship will not relocate to Nicaragua, forced relocation to Nicaragua will result in the loss of her close relationship with her son and her other family members, she is a clerical worker and relocation will destroy her career, she will not be able to obtain meaningful employment in Nicaragua as the unemployment rate is high, the applicant will lose his career in the United States, their family will face severe economic and emotional hardship, they have no family or friends to help them, they may face persecution in Nicaragua, there is systematic and prevalent discrimination against women in Nicaragua, her family will not be able to live a normal life, and her children's lives will be destroyed economically and emotionally. *Applicant's Spouse's Statement,* at 1-2, dated March 25, 2004. The AAO notes that the applicant's spouse was granted asylum from Nicaragua.

Based primarily on the grant of asylum to the applicant's spouse, the AAO finds that she would experience extreme hardship upon relocating to Nicaragua.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant has been married to his spouse for 22 years, the applicant's spouse will be unable to maintain her economic stability if the applicant is removed as both work for the same business and her services will not be retained by the company in the applicant's absence, the couple has raised a family and is emotionally and financially dependent upon one another, the applicant's spouse has particular reason to worry about the applicant's safety in Nicaragua as his informant activities for Immigration and Customs Enforcement (ICE) may be suspected or known by drug traffickers, it is common for high-level drug traders to arrange informants' deaths, and the applicant's spouse will be in an extremely difficult emotional situation due to her constant fear for the applicant's well-being. *Brief in Support of Appeal*, at 1, 5-6, 8.

The AAO notes that the record offers evidence that the applicant and his spouse are currently employed by the same business, but that there is no explanation or documentation of counsel's claim that the applicant's spouse's employment would be terminated if he is removed. The record also lacks documentation in support of counsel's claim that the applicant would be at risk in Nicaragua as a result of his cooperation with ICE. 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).

The applicant's spouse states that the applicant's and their children's lives will be ruined if the applicant is not allowed to stay in the United States and they deserve a second chance to have a successful marriage, united family and successful life that includes a career and business. *Applicant's Spouse's Statement*, at 2.

The applicant's family was evaluated by a licensed clinical psychologist who details the closeness of the family, and the emotional difficulties that the applicant's spouse and children would experience without the applicant. *Psychological Evaluation of the Applicant's Family*, at 2-3, dated May 25, 2009. She concludes that it would cause the applicant's spouse extreme hardship to be separated from the applicant. *Id.* at 3. In 2006, the applicant's spouse was evaluated by a psychologist who states that the applicant's spouse reported that she had received psychological counseling approximately two years earlier due to having thoughts of harming herself as a consequence of the applicant facing deportation and that she was experiencing depressed mood almost every day, impaired sleep and appetite, difficulty concentrating and feelings of hopelessness, helplessness and worthlessness. *Psychological Evaluation*, at 1, 3, dated November 3, 2006. The psychologist found the applicant's spouse to meet the criteria for a depressive disorder but also noted that tests conducted with the applicant's spouse indicated that she might be an individual who amplifies problems as a plea for help. *Id.* at 2. The record does not include evidence of the prior psychological counseling referenced by the applicant's spouse during her 2006 interview. A 2002 evaluation, also

performed by a clinical psychologist, reports that the applicant's spouse has difficulty sleeping, awakens at night as a result of anxiety, has problems with concentration and attention, and feels that the applicant's absence would be financially and emotionally catastrophic. This psychologist diagnosed the applicant's spouse with adjustment disorder. *First Psychological Evaluation*, at 2-3, dated July 16, 2002. An evaluation of the applicant's daughter by this same psychologist details the numerous emotional and educational issues that she would experience without the applicant, concluding that separation from the applicant would have an adverse emotional impact on her. *Psychological Evaluation of the Applicant's Daughter*, at 2-3, dated September 10, 2002.

While the input of any mental health professional is respected and valuable, the AAO finds the submitted evaluations to be of limited value to a determination of extreme hardship. The 2009 evaluation focuses largely on the applicant's children, who are not qualifying relatives for the purposes of this proceeding, and fails to offer a clinical diagnosis of the applicant's spouse's mental state, finding instead that separation from the applicant would result in extreme hardship for her. The 2006 evaluation concludes that based on her reported symptoms the applicant's spouse meets the criteria for a depressive disorder, but also notes that test results indicate that she may be someone who amplifies her problems as a plea for help. The 2002 evaluation lacks the detailed analysis necessary for the AAO to determine how the diagnosis was reached. Accordingly, the record does not include sufficient evidence of emotional, financial, medical or any other type of hardship that, in the aggregate, establishes that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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. Moreover, the AAO notes that 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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility and is sympathetic to her situation. However, the record does not distinguish her hardship from that of other individuals whose spouses have been found inadmissible to the United States and, therefore, does not establish that she would experience extreme hardship if the applicant is excluded. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *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.