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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: SEP 17 2009

IN RE:

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, Los Angeles, 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). He is the husband of a U.S. citizen and the father of four U.S. citizens. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen wife, or that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 6, 2004.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship if the applicant is excluded..

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 proscribed by 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 . . . .

The record indicates that, in 1995, the applicant presented the U.S. birth certificate of another person to enter the United States, and was subsequently detained and removed. The record also indicates that he used a fraudulent parole document in attempting to enter the United States in 2001. Thus, the applicant has both entered and attempted to enter the United States by fraud or material misrepresentation. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act.[1] The applicant does not contest this finding.

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[1] The AAO notes that the record also indicates that the applicant entered the United States without inspection on January 20, 1997 and, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until December 19, 1997, the date on which he first filed for adjustment of status. The applicant's adjustment application was denied on December 12, 2000, and he again accrued unlawful presence until he

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the U.S. citizen spouse 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,* 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).

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS,* 809 f.2d 1419, 1423 (9th Cir. 1987) *citing Bastidas v. INS,* 609 F.2d 101 (3rd Cir. 1979). However, U.S. court decisions have also held that the common results of removal 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In that this case arises within the jurisdiction of the 9th Circuit Court of Appeals, family separation will be given appropriate weight.

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departed the United States on December 29, 2000. In that the requirements for waiving inadmissibility under section 212(a)(9)(B)(v) of the Act are the same as those under section 212(i) of the Act, the AAO will not address whether the applicant's admission is barred by section 212(a)(9)(B)(i)(I) of the Act as the applicant's eligibility for a waiver under section 212(i) of the Act will also waive any 212(a)(9)(B) inadmissibility.

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 of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence: counsel's brief; statements from the applicant and his spouse; country conditions reports on human rights practices in Mexico; property documents for the applicant and his spouse; employment verification statements for the applicant and his spouse; bank statements for the applicant and his spouse; a behavioral evaluation for one of the applicant's children; medical records pertaining to one of the applicant's children; treatment records for the applicant's spouse; birth certificates for the applicant's children; and a marriage certicate for the applicant and his spouse.

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

On appeal, counsel asserts that the applicant has a well-paying job in the United States, which he would not be able to find in Mexico, and that his children do not know life anywhere else but the United States.

Counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is excluded and she remains in the United States because she will be the sole support for her four United States citizen children, and cites to *Matter of Recinas*, 23 I&N Dec. (BIA 2002). However, in *Matter of Recinas,* the applicant was the sole support for her six children, and the hardship was to the applicant's children. In this proceeding, the applicant's spouse is not solely responsible for the support of her children, and she, not her children, is the qualifying relative. Children are not qualifying relatives in § 212(i) proceedings. While *Matter of Recinas* is distinguishable from this case, the hardship of raising four children without the presence of the applicant will be considered to the extent that the record establishes its impact on the applicant's spouse.

Counsel asserts that the exclusion of the applicant would exacerbate his spouse's psychiatric condition and result in her losing control or abandoning her role as a mother and provider. While the record contains documentation with regard to the applicant's spouse's psychiatric treatment, this documentation offers insufficient evidence of the nature of the applicant's spouse's emotional problems, their severity or the extent to which they affect her ability to care for herself or her children. The record does not contain a medical diagnosis of the applicant's spouse's mental health, nor does it address how the applicant's exclusion would affect her mental health. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

Counsel also asserts that it would constitute a financial hardship on the applicant's spouse if the applicant were excluded, and that loss of the lifestyle to which their children have become accustomed would constitute an extraordinary circumstance. The record indicates the applicant's spouse is currently employed and provides significant income to his family. It has not been demonstrated, however, that the applicant's spouse would be unable to financially support herself or her children in the event of the applicant's exclusion. It is not clear from the record that the

applicant's spouse has accumulated any debt, what her monthly financial obligations are, or that her current income would not be sufficient to sustain their household. In addition, although it has been asserted that the applicant would be unable to find employment in Mexico, the record does not support this claim. The submitted country conditions materials address human rights in Mexico and do not establish that the applicant would be unable to find employment and provide for his family from Mexico. While the AAO acknowledges that the applicant's exclusion may lead to financial difficulties for the applicant's spouse, the record does not establish that the financial difficulties she might encounter would rise above those normally experienced by the relatives of aliens who have been excluded. *See Matter of Ige*, 20 I&N 880 (BIA 1994) (reasoning that the existence of a reduction in a standard of living or financial hardship or difficulty readjusting, without more, do not constitute extreme hardship).

Counsel asserts that it would constitute an extreme hardship to the applicant's spouse if she were to return to Mexico because she has lived her entire life in the United States and has developed strong community ties. The AAO acknowledges that the applicant's spouse is a United States citizen. However, having to adjust to living conditions in Mexico alone does not constitute an extreme hardship. As such, the 9th Circuit Court of Appeals cases cited by counsel are informative as to what constitutes extreme hardship, but not for the purposes of establishing extreme hardship to the applicant's qualifying relative in this proceeding. Counsel also references the country conditions materials submitted into the record. However, the reporting of human rights abuses across Mexico is not sufficiently probative of the applicant's situation to establish that he or his spouse would be subject to such conditions. The AAO acknowledges the lower standard of living in Mexico and the less than ideal social conditions on a national level, as indicated by the materials submitted. Nevertheless, without evidence that is more probative to the applicant and his spouse's situation, the evidence submitted does not warrant a finding that any impact on them would rise to the level of extreme.

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. Counsel asserts that employment would be scarce in Mexico, and that the applicant and his spouse would be unable to support their children and maintain the life they have established in the United States. As noted above, the human rights reporting materials submitted to the record describe general country conditions in Mexico and are informative as they apply to a comparison with social conditions in the United States, but are not sufficiently probative or specific to the applicant to establish his burden in this proceeding. In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court explained that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy." In addition, the court in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) concluded that hardship resulting from a lower standard of living, difficulties of readjustment and environment, reduced job opportunities, did not rise to the level of extreme hardship).

The applicant's spouse asserts that if she and her children were to relocate to Mexico they would lose the health and education benefits available to them in the United States, and that her third child, who is suffering from a hearing and speech disability, would be separated from the doctors who already know his condition. She also reiterates the assertions of counsel, that she and the applicant

would be unable to find employment, that she is unfamiliar with living in a foreign country and her children do not speak Spanish.

Although the applicant's children are not qualifying relatives for the purposes of a section 212(i) proceeding, the AAO notes that the record contains a 2004 educational assessment of the applicant's third child that indicates his social behavior is of concern and that he has harmed other children and members of the school district staff. The record also contains copies of medical prescriptions and reports indicating that the applicant's third child has been tested for hearing loss and may be receiving speech therapy. However, the AAO does not possess the authority or the expertise to determine the results of the submitted tests and the applicant has failed to provide a medical diagnosis of his son's condition, including its severity and the type and extent of the treatment it requires. Accordingly, the AAO is unable to conclude how the child's medical condition might affect his mother if the family relocated to Mexico. Further, the record also contains no evidence that the applicant's third child or his spouse would be unable to receive medical treatment for their health conditions in Mexico. The fact that economic, educational, and medical facilities and opportunities may be better in the United States does not in itself establish extreme hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994). As such, it is not evident that any impact on her children would rise to such a level as to create an extreme hardship on her.

Counsel asserts that it was a legal error for the District Director not to consider hardship to the applicant's children, and that the District Director's narrow construction of hardship was unwarranted. However, as just discussed, section 212(i) does not define children of applicants as qualifying relatives and any hardship to them is considered only to the extent that it affects the qualifying relative. The AAO notes that it is the applicant's burden to establish eligibility for a waiver in these proceedings, which in this case includes establishing that that any indirect hardship to the applicant's children would affect his spouse in such a manner as to constitute extreme hardship. The record does not offer this evidence. Moreover, the AAO also observes that it is permissible for the Secretary to construe extreme hardship narrowly. *INS v. John Ha Wang*, 450 U.S. 139 (1981); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986)(acknowledging that INS has the authority to construe extreme hardship narrowly).

Whether considered individually or in the aggregate, the AAO does not find the hardship factors presented in the record to support a finding that the applicant's spouse would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the exclusion of the applicant. The record, however, does not distinguish her hardship from that commonly associated with removal and separation, and, it, therefore, 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. Accordingly, the AAO finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.