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

[redacted]

FILE: [redacted] (relates) Office: MEXICO CITY (CIUDAD JUAREZ) Date: AUG 0 2 2010

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); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew for
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the mother of three United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and children.

The District Director found 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 24, 2007.

On appeal, counsel claims that the applicant's waiver application should be approved, "because extreme hardship to the [applicant's husband] is shown." *Counsel's brief*, dated October 24, 2007.

The record includes, but is not limited to, counsel's brief; statements from the applicant's husband in English and Spanish[1]; a psychological evaluation and psychological reports on the applicant's husband; school records and medical documents from Mexico for the applicant's children; articles on tonsillitis; letters of support for the applicant and her husband; and money transfer receipts and tax documents. The entire record was reviewed, and considered, with the exception of the Spanish language documents, in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 Act is inadmissible.
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> . . . .

[1] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. Two statements from the applicant's husband are in Spanish and are not accompanied by English-language translations. Accordingly, the AAO will not consider these documents in this proceeding.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that on December 30, 1985, the applicant married her husband in Mexico. On May 9, 1986, the applicant attempted to enter the United States by presenting a fraudulent document. On an unknown date, the applicant entered the United States without inspection. On February 27, 1988, the applicant filed an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700). On May 26, 1988, the applicant's Form I-700 was denied. On an unknown date, the applicant departed the United States. On June 12, 1989, the applicant attempted to enter the United States by presenting a false Form I-210, Temporary Agriculture Worker Card, and was paroled into the United States. On June 28, 1990, the applicant's Form I-700 was reopened. On November 22, 1991, the applicant's Form I-700 was denied. On May 27, 1992, the applicant filed an appeal to the AAO of the denial of her Form I-700. On October 7, 1996, the applicant's husband filed a

Form I-130 on behalf of the applicant. On November 12, 1996, the applicant's Form I-130 was approved. On September 23, 1999, the AAO dismissed the applicant's appeal. In February 2000, the applicant voluntarily departed the United States. On May 17, 2006, the applicant filed a Form I-601. On September 24, 2007, the District Director denied the applicant's Form I-601, finding the applicant had attempted to enter the United States by willfully misrepresenting a material fact, accrued more than a year of unlawful presence, and failed to demonstrate extreme hardship to her lawful permanent resident spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until February 2000, when she departed the United States. The AAO notes that it has been more than ten years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. Therefore, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. However, based on her use of a fraudulent document in attempts to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) 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 would impose an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant would experience upon removal is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children will not be considered in this proceeding except to the extent that it creates hardship for a 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).

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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship. 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. The BIA has also held:

> 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *see also 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); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only "in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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

The AAO notes that on March 14, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to Mexico, this warning is focused on northern Mexico, i.e., along the United States-Mexico border. In that the record establishes that the applicant is residing in the Mexican state of Jalisco, the AAO does not find the record to establish that the applicant's family has relocated to a part of Mexico where they would be subjected to violence.

In a statement dated October 19, 2007, the applicant's husband states his children are "suffering due to the education that they left behind." The AAO notes that no country conditions materials have been submitted establishing that conditions in Mexico are such that the applicant's children's educational development has been affected by relocating to Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). The applicant's husband states that his children "suffer from tonsillitis multiple times a year." The applicant's husband states that "all [of his children's] medical expenses are being paid out-of-pocket" and this is causing him extreme financial hardship. The AAO notes that there is no evidence in the record that the applicant's children have been unable to receive treatment for their medical conditions in Mexico or that the applicant's spouse would be unable to afford their treatment if he resided in Mexico.

The AAO notes the record fails to contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, the AAO notes that the applicant's husband is a native of Mexico, he submitted statements for the record that are written in Spanish, and it has not been established that he does not speak Spanish nor that he has no family ties in Mexico. Further, other than the statement from the applicant's husband, the record does not include any evidence of financial, medical, emotional or other types of hardship that the applicant's husband would experience if he joined the applicant in Mexico. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship if he joined the applicant in Mexico. The applicant has, however, established extreme hardship to her husband if he remains in the United States without her.

The applicant's husband states because of the "overwhelming thoughts concerning [the applicant's] future," he has "become emotionally and physically distraught." In a psychological evaluation dated July 18, 2007, psychologist [redacted] diagnosed the applicant's husband with major depressive disorder, sleep disorder, anxiety disorder, and adjustment disorder. [redacted] reports that the applicant's husband visits his family in Mexico once a year and he "has progressively gotten worse in terms of his psychiatric conditions."

The applicant's husband states his "two youngest children are currently living in Mexico" and "[t]his causes distress for the entire family as the children feel torn from being with one or the other parent." The applicant's husband states that his children "suffer from tonsillitis multiple times a year." The AAO notes that there is no evidence in the record that the applicant's children have been unable to receive treatment for their medical conditions in Mexico.

The applicant's husband states that "all [of his children's] medical expenses are being paid out-of-pocket" and this is causing him extreme financial hardship. He also states that he is the sole provider for his family in Mexico and he is suffering financially. The AAO notes that the record contains copies of money transfer receipts from the applicant's husband to the applicant in Mexico. In a letter dated October 15, 2007, [redacted] states the applicant's husband has been employed with their company since [redacted], he works 40+ hours per week, and makes $7.50 an hour. Additionally, the AAO notes that in 2006, the applicant's husband claimed an income of $11,001, which is barely at the poverty level for a family of one. *See U.S. Individual Income Tax Return* (Form 1040A), for 2006. The AAO acknowledges that the applicant's husband is suffering financial hardship. However, the AAO

notes that it has not been established that the applicant is unable to obtain employment in Mexico or that she is unable to contribute to her family's financial well-being from a location outside the United States.

The AAO finds that when the applicant's husband's psychological conditions and financial hardship are considered in combination with the normal hardships that result from the removal of a loved one, the applicant has established that her husband would experience extreme hardship if he remained in the United States.

However, in that the record does not also establish that the applicant's husband would suffer extreme hardship if he relocated to Mexico, the applicant has failed to establish extreme hardship to her husband 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 for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.