identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

H5

FILE: [redacted] Office: SAN BERNARDINO, CA Date: MAY 11 2010
(consolidated therein)

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)

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, San Bernardino, California, 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 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 attempted to enter the United States through fraud or willful misrepresentation. The record indicates that the applicant is married to a naturalized United States citizen and the mother of three United States citizens. 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(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and children.

The Field Office 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 Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 14, 2007.

On appeal, counsel asserts that the Field Office Director "failed to consider the totality of the hardship presented to [the applicant's] U.S. citizen husband should she not be permitted to remain in the U.S." *Form I-290B*, filed September 14, 2007. Additionally, counsel claims that the applicant "assisted her U.S. citizen husband throughout his ongoing medical care and has taken care of the family unit when her husband was unable to do so." *Id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, her husband, and her children; a letter from [redacted] regarding the applicant's husband's eyesight; medical documents from Mexico for the applicant's father; banking statements, household bills, and mortgage documents; articles on health care, poverty and crime in Mexico; and a U.S. Department of State report on Mexico. 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, 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.
>
> . . . .
>
> (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...

In the present case, the record indicates that in August 1989, the applicant entered the United States without inspection. On December 5, 1997, the applicant married her husband, a native of Mexico, in California. On December 31, 1997, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On an unknown date, the applicant voluntarily departed the United States. On August 3, 1998, the applicant attempted to enter the United States by presenting a resident alien card issued to another individual. On the same day, the applicant was expeditiously removed from the United States. On an unknown date in August 1998, the applicant entered the United States without inspection. On August 18, 1998, the applicant's Form I-130 was approved. On May 24, 2001, the applicant's husband became a United States citizen. On August 16, 2001, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On June 30, 2003, the applicant filed a Form I-601. On July 3, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On September 1, 2004, the District Director, Los Angeles, California, denied the applicant's Form I-601, finding that the applicant was ineligible for a waiver because she had entered without inspection a few days after she was expeditiously removed. On November 8, 2006, the applicant filed another Form I-601. On June 22, 2007, the applicant's Form I-212 was approved. On August 14, 2007, the Field Office Director denied the applicant's Form I-601, finding the applicant had entered the United States by willfully misrepresenting a material fact and had failed to demonstrate extreme hardship to her qualifying relative.

Based on the applicant's use of another person's resident alien card 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)(i) 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 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 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. 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.

Counsel states that, after many years of absence, it would be difficult for the applicant's husband to find employment in Mexico. *Appeal brief*, at 8, dated September 28, 2007. Counsel further asserts that the applicant's husband does not have the education, skill and experience to find a job in Mexico and that "his experience working in U.S. farms, factories and service industries would not aid him in his search for work in Mexico." *Id.* The record, however, does not support counsel's claims. While it includes a copy of the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2006, this general overview of human rights abuses in Mexico does not demonstrate how the applicant's husband would be affected by such abuses. Although the report indicates that the minimum wage in Mexico does not provide a decent standard of living for a worker and his or her family, nothing in the record establishes that the applicant's spouse would be limited to minimum wage employment. No other country conditions material is submitted to establish that the applicant's husband would be unable to obtain employment if he joined the applicant in Mexico. Additionally, the record does not indicate that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico.

Counsel states that the applicant's husband suffered third degree burns to his eyes in 1993 and is under "the watchful care of his doctors." *Appeal brief*, at 9. Counsel claims that the applicant's husband would not find adequate healthcare in Mexico, and because he "does not belong to the affluent class in Mexico," his healthcare options are limited. *Id.*, at 10. In a letter dated October 8, 2007, [redacted], states that the applicant's husband received third degree burns to his eyes at work in 1993, and in 1995, he had eye surgery in relation to these burns. To address the applicant's husband's difficulty in focusing his eyes and the burning and redness in his eyes, [redacted] indicates that she recommended glasses for the applicant's husband's astigmatism, and the use of artificial tears and gels to deal with his eye irritation. Additionally, [redacted] notes that she referred the applicant's husband to have his Ptyerigiums, fleshy growths usually occurring in the corner of the eye, removed. The AAO notes that [redacted] did not indicate that the applicant's husband had to remain in the United States to receive further treatment or that he could not receive such treatment in Mexico. The AAO acknowledges counsel's claim regarding the inequities of Mexico's healthcare system. However, the published article on Mexico's health care inequities that has been submitted for the record does not establish that the applicant's husband will not have access to adequate medical care in Mexico. *See* Addressing Inequity in Health and Health Care in Mexico, Health Affairs, Volume 21, Number 3, May/June 2003.

Counsel claims that the applicant's children "would have an extremely difficult time adjusting to life in Mexico because the culture, language and environment are alien to them." *Id.* at 5. The applicant's husband states that "the education and the psychological development of [his] children will be seriously affected" if they move to Mexico. However, the AAO notes that the country conditions report and articles submitted by the applicant do not establish that conditions in Mexico are such that the applicant's children's educational development would be affected by relocating to Mexico. Additionally, the record fails to include any documentation to establish that relocation to Mexico would affect the applicant's children's psychological development. 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). 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)). Further, as previously noted, the applicant's children are not qualifying relatives for the purposes of this proceeding and the record does not demonstrate how any hardship they might suffer in Mexico would affect their father, the only qualifying relative.

The AAO also notes that the applicant's husband is a native of Mexico, who speaks Spanish and spent a number of years in Mexico. Additionally, the record establishes that the applicant's mother resides in Mexico. *See Biographic Information* (Form G-325A), dated December 8, 1997. Based on the record before it, the AAO does not find the applicant to have established that her husband would suffer extreme hardship if he returned to Mexico with her.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and with access to his current healthcare. On appeal, counsel asserts that if the applicant is removed from the United States, it will "result in the disintegration of her family." *Appeal brief*, at 4. Counsel also states that the applicant's husband is "concerned about the safety of [the applicant] in Mexico. Rampant crime has plagued Mexico . . . . Given this environment in Mexico, anybody who has relatives living there would be naturally worried about the safety of his loved ones." *Appeal Brief*, at 6. Counsel further claims that the applicant's husband "has been suffering from anxiety and depression due to the possibility of being permanently separated from [the applicant]." *Appeal Brief*, at 5. The applicant's husband states that "[t]he separation from [the applicant] will bring [him] an extreme and unusual hardship as well as emotional and psychological imbalance of great impact, it will be a serious problem to continue forming and educating [his] children, as well as continuing [his] medical treatments." The applicant's husband asserts that the applicant supports him with his medical treatment and that he has "presented/displayed stages of depression because of the accident."

Although the AAO acknowledges the applicant's husband's concerns for the applicant's safety in Mexico, it does not find the record to support them. The record contains the article, Crime is Main Problem for Mexicans, dated September 10, 2007, as well as other reports on the increase of weapons and drug violence in Mexico. However, these articles do not offer a basis on which to conclude that the applicant's wife would be subjected to violence and crime in Mexico. The AAO notes that, on March 14, 2010, the Department of State issued a travel warning for Mexico. The warning, however, focuses on the northern border states of Mexico, not the state of Jalisco, the home of the applicant's father, or Guerrero, the Mexican state where the applicant's husband's mother lives. Furthermore, as previously noted, hardship the applicant herself experiences upon removal is not directly relevant to a section 212(i) waiver proceeding and other than statements from counsel and the applicant's husband, the record includes no documentation, e.g., a psychological evaluations of the applicant's husband, that establishes the applicant's husband is experiencing or would experience emotional and/or psychological problems as a

result of the applicant's removal or that he has experienced a mental health problem as a result of the 1993 accident involving his eyes. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.*

The applicant's husband states that, with his health problems, it will be difficult to care for his children. The AAO notes that the applicant's children are 19, 15, and 7 years old, and the record does not establish that applicant's husband cannot care for his children, that his older children cannot help care for the youngest child or that he cannot afford childcare for his youngest child. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Moreover, while the record includes documentation of some of the applicant's and her husband's expenses, they are insufficient proof that the applicant's husband would be unable to support himself and his children in the applicant's absence. Further, the applicant has submitted no evidence to establish that she would be unable to obtain employment in Mexico and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO does not find the applicant to have established that her husband would experience extreme hardship if her waiver application were to be denied and he remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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.