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U.S. Citizenship
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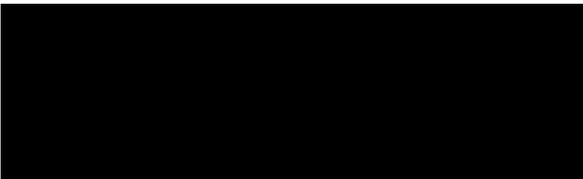
Date: **APR 01 2005**

IN RE:



PETITION: 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 citizen of Mexico who 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 submitting a birth certificate belonging to another person in connection with her attempted entry into the United States under a false claim to U.S. citizenship, on June 2, 1996, near San Ysidro, California. The applicant subsequently married her U.S. citizen spouse on November 13, 1997 in Los Angeles, California. The applicant's spouse then submitted a Petition for Alien Relative (Form I-130), on behalf of the applicant on November 20, 1997. The applicant filed for adjustment of status pursuant to section 245 of the Act on March 4, 1998. The I-130 petition was subsequently approved on March 19, 1998. During the course of the applicant's adjustment of status interview it became apparent that the applicant had entered the United States through fraud. The applicant, through counsel, was advised to submit a Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow her to remain in the United States with her U.S. citizen spouse.

The district director issued a decision denying the waiver application on October 24, 2003, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case her U.S. citizen spouse. *Decision of the District Director* dated October 24, 2003. Counsel filed an appeal from this decision on November 21, 2003, providing a brief statement that was supplemented by a brief in support of the appeal.

On appeal, counsel asserts that numerous factors support the grant of the waiver and alleges that the district director erred in finding that the applicant had failed to establish extreme hardship, and failed to weigh all of the factors presented in support of the application and contained factual errors. *See Notice of Appeal (Form I-290B)*, dated November 30, 2003. Counsel's principal assertion of error is that the district director failed to recognize the cumulative hardship to the applicant's qualifying relatives. Specifically, counsel asserts that: "the Service fails to address the fact that Mrs. [REDACTED] ailing mother will likely end up in nursing home [sic] (if affordable), her father will be left without his daughter and her husband will either lose his family or his successful business in operation for twenty [20] years." *Counsel's Appeal Brief*, dated December 2, 2003, at p.2. The AAO will review the district director's decision and proceed to examine the evidence contained in the record.

On appeal, counsel asserts that the waiver application should be granted based upon the hardship that will befall the applicant's U.S. citizen spouse, and her lawful permanent resident parents due to her separation from family in the United States. Counsel asserts that the district director's decision failed to consider the hardship that would befall the applicant's lawful permanent resident mother who is in ill health. *Counsel's Appeal Brief*, at p. 4. The hardship to the mother relates to the fact that she is allegedly dependent upon the applicant for assistance in her care and in getting her to medical appointments. According to a statement submitted by the mother, she depends upon the applicant to provide care for her when she is sick, take her to medical appointments, and visit her on a daily basis. *Declaration of Antonia Guerrero Michel*, at p. 1. She states that of her nine living children, the rest of whom live in the United States as citizens or permanent residents, she is closer to the applicant than to her other children. She goes on to state that she recently broke

her hip and without the assistance the applicant provided, she would have needed to remain in a nursing facility. *Id.*

In support of the claim of hardship to the applicant's United States citizen spouse, the record contains a statement from the spouse, [REDACTED]. The applicant's spouse states that he met the applicant several years earlier while playing as a musician at a wedding and married her shortly thereafter in November 1997. According to the applicant's spouse, the couple now has two children. He reiterates that the applicant provides love and support to her parents and "is her mother's main sense of support." *Declaration of Fausto Navarro*, at p. 2. The applicant's spouse goes on to state that the applicant is a wonderful mother and excellent wife. He further asserts that without his wife his life "would fall apart." *Id.* at p. 2. He states that he works very long hours and the applicant is in charge of the family's home, including caring for the children and household chores. The applicant's spouse asserts that if his wife were forced to leave the United States, he would leave with her and that while the children cannot be without their mother, he would want them to have all the benefits they deserve as citizens. He further states that he owns his own business which has been in operation for over twenty years and that if forced to live in Mexico he would be unable to support his family, including providing health care for them. The applicant's spouse explains that the family has been very active in their church in the United States, and that their charitable endeavors extend to their support of children and the elderly in their hometown in Mexico. *Id.* at p. 3.

In addition to the statements of the applicant's spouse and mother, the record contains copies of several years of tax returns for the couple, copies of the certificates of naturalization or permanent resident cards relating to the applicant's siblings, birth certificates for the applicant's two children, a letter from the church attended by the couple, copies of family photographs, and assorted financial and medical records, such as bank statements, rental agreements, and medical records relating to the applicant's pregnancy. The entire record was reviewed and considered in rendering 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.
- (ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

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

Section 212(i) of the Act provides:

- (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.

Counsel contends that the district director erred in failing to consider the cumulative effect of the evidence of hardship to the applicant's qualifying family members, and by failing to fully consider the evidence of hardship presented. In particular, counsel notes that the district director's decision did not fully consider the evidence of hardship to the applicant's permanent resident mother, which, according to counsel, demonstrated that she depends upon the applicant to receive her proper doses of medication, and attend doctor's appointments and without her assistance she "will likely be put into a nursing home" if the applicant returns to Mexico, if the applicant is required to live in Mexico. According to counsel, the failure to consider this evidence is reversible error.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

While the AAO agrees that the district director could have discussed the asserted hardship to the applicant's mother more thoroughly, and the AAO will do so in this decision, it nevertheless agrees with the district director's ultimate assessment of the evidence. The conclusion that counsel wishes the AAO to reach is that

the applicant's mother would be left helpless without the assistance of her daughter. The AAO declines to overturn the district director's finding due to the lack of persuasive evidence in this regard.

First, the AAO notes that while counsel contends that the mother's condition is quite fragile and may require her admission to a nursing home facility without the applicant's assistance, no objective evidence supporting such assertions appears in the record. The assertions of counsel are not evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The principal ailment from which the applicant's mother suffers appears to be a broken hip that occurred on an unspecified date. While reference to this injury is made in the statements of the applicant's spouse and mother, no medical evidence of the mother's condition has been submitted, although she allegedly underwent surgery. There is likewise no medical evaluation as to her post-operative condition and her prognosis for a full recovery. In addition, although the applicant's mother and spouse both contend that the mother is dependent upon her to ensure that she receives her proper dosage of medications, there is no objective indication, such as through a letter from a doctor, as to why the applicant's mother is unable to take medication unassisted. Moreover, even if the applicant's mother does require assistance at this time with tasks of daily living, the evidence does not clearly establish that she does not have other assistance available her and that only the applicant is in a position to assist her. The record reflects that the applicant's mother and father live in the home of another daughter. It is therefore, reasonable to assume that if the applicant's mother requires assistance that she could presumably receive it from individuals with whom she lives. Furthermore, the record reflects that the applicant's father is still living and, according to the spouse's affidavit, is in satisfactory health. *See Declaration of Fausto Navarro*, dated September 30, 2003. It is therefore, unclear why he is not in a position to assist in the care of his wife.

In addition, as reflected in the record, the applicant's parents have a total of nine children living in the United States, and, according to the spouse's statement, one of the other children also plays a substantial role in caring for the applicant's mother. Therefore, it appears that the applicant's mother and father have an extended family network in the United States, and other children that either do assist with their care, or are in a position to do so. Consequently, there is insufficient evidence from which to conclude that the applicant's mother would experience extreme hardship on the basis of her dependence upon the applicant relating to her physical health.

Counsel also asserts on appeal that the district director failed to adequately consider the hardship that would be experienced by the applicant's U.S. citizen spouse. The evidence in the record pertaining to that hardship comes exclusively from the spouse's statement. The spouse asserts that he would suffer hardship in the form of emotional hardship resulting from a separation from his wife, the hardship of having to maintain his home and raise his children without her, and the potential hardship of losing his business of twenty years as a result of having to care for his children and being unable to work the same hours to maintain that business. The spouse also contends that the evidence in the record establishes that applicant's removal would result in extreme hardship to himself and the couple's U.S. citizen children, as they would join the applicant in Mexico if she were forced to leave the United States.¹

¹ Although the record contains references to the hardship that will be suffered by the couple's two U.S. citizen children, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

The applicant's spouse asserts that he will suffer extreme hardship due to his inability to maintain the family household without his spouse and the negative effect that a reduced workload will have upon his ability to maintain his own business, a janitorial and painting services operation, that he asserts has been in operation for over twenty years. *See Declaration of Fausto Navarro*, dated September 30, 2003. The record also contains copies of business tax certificates issued by the city of Downey, California to Navarro Janitorial and Painting Service. While the AAO acknowledges that the applicant's spouse would face difficulties in trying to raise his children and maintaining his business at the same time, the AAO is unable to conclude that such a hardship would be an extreme hardship. First, it is reasonable to believe that should the applicant's spouse choose to remain in the United States with the couple's U.S. citizen children, the large and extensive family in the United States could be a source of support for the applicant in terms of assisting with childcare and other tasks of daily life. Moreover, even if the applicant were unable to find family members to assist with childcare duties, it would not be unreasonable to expect the applicant to explore and avail himself of childcare options utilized by working parents. While the placement of the children in a childcare setting may not be preferred, it also cannot be said to be an extreme hardship. That would appear to be less of a hardship than would be the loss of the applicant's job, which, as noted by the district director, has previously been held by the Board of Immigration Appeals to not constitute extreme hardship.

The record also reflects that the applicant's spouse also indicated that if his wife were forced to leave the country, he would have no choice but to leave the United States in order to live with her in Mexico. *See Declaration of Fausto Navarro*, dated September 30, 2003. He asserts that he would suffer extreme hardship if forced to live in a foreign country where he would be unable to support his family. *Id.* The AAO notes that the spouse, as a United States citizen, would not be forced to leave the United States. If he does so, it would be based on a judgment made with his family that they would be better off together as a family in Mexico. With respect to Mr. [REDACTED] claim that he would be unable to support his family in Mexico, the AAO finds that that is merely speculation. While undoubtedly the family would experience some difficulty in transitioning to a life in Mexico, the applicant's spouse has obviously been able to rely upon his skills and abilities in developing and operating a business for over twenty-years in the United States. These skills would certainly assist him in establishing a business or locating suitable employment in Mexico.

Finally, the applicant's spouse asserts that the couple is involved in charitable endeavors, and that there would be harm to the community in the United States and in Mexico if they were unable to continue to reside in the United States in order to support these endeavors. Specifically, the assertion is that they are "very involved" in their church in Huntington Park, donate regularly, and volunteer their time. *See Declaration of Fausto Navarro*, dated September 30, 2003. In addition, the couple also claims to belong to a "club" that raises funds for the poor in their hometown in Mexico. This is also supported by a statement offered by the spouse's cousin. *See Statement of Roberto Alvarez*, dated September 30, 2003.

The AAO finds that the charitable endeavors of the applicant and her spouse are favorable factors. However, they are not factors that demonstrate extreme hardship, but rather, factors that may be taken into consideration as discretionary factors in support of the application once statutory eligibility has been established. As such, this information does little to support the claim of extreme hardship.

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. The AAO recognizes that the applicant's spouse and mother may endure hardship as a result of separation from the applicant. However, it appears that the family unit would experience the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship. As discussed previously, the applicant has an extensive family network in the United States that can operate to assist her spouse and mother to adjust to the additional difficulties they will encounter without her.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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.