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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: JUN 10 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, San Francisco, California, 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 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 procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and 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 spouse.

The interim district 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 Interim District Director*, dated September 19, 2003.

On appeal, counsel states that the applicant was denied a reasonable opportunity to present evidence in support of her application in that she was instructed to submit only a letter of hardship and led to believe that no additional documentation was necessary. Counsel contends that the submitted evidence must now be considered as failure to do so would constitute a denial of the applicant's right to due process. *Form I-290B*, dated October 19, 2003.

In support of this assertion, counsel submits a brief, dated November 22, 2003; a letter from the applicant's spouse; a declaration of the applicant's spouse; a letter from a psychologist regarding the applicant's spouse; letters of support; evidence of the applicant's participation in English language classes and a country condition report for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to obtain admission to the United States by presenting fraudulent documentation to an immigration official.

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.

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.

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 herself 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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.

Counsel contends that the applicant's spouse would suffer hardship as a result of separation from the applicant. Counsel submits the declaration of the applicant's spouse to support the proposition that the applicant brought stability and productivity to her spouse's life. *See Declaration of Everardo Contreras*, dated November 17, 2003. The applicant's spouse states that he was imprisoned prior to meeting the applicant. He indicates that spending time with the applicant prevented him from "getting into trouble." *Id.* at 3. The applicant's spouse states, "Maybe I would have stayed out of trouble anyway, but who knows what could have happened if I hadn't met Carmen." *Id.* Counsel also submits a letter from a psychologist who met with the applicant's spouse and concludes that separation from the applicant would cause "serious emotional and psychological trauma for him..." *Letter from Luis Janssen, Ph.D.*, dated October 20, 2003. The AAO notes that the statements of the applicant's spouse are speculative and the findings stated by the psychologist in his letter are based on an isolated meeting with the applicant's spouse. The record does not reflect that the applicant's spouse is under continuous care or medication prescribed by a mental health professional and any concerns that the applicant's spouse will fail to be a productive citizen in the absence of the applicant are unsubstantiated beyond the assertions of the applicant's spouse himself.

Counsel asserts that the applicant's spouse will suffer hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel submits a copy of a State Department report addressing country conditions in Mexico to support his contention that the applicant and her spouse would face a difficult economic situation in Mexico. *Brief in Support of Application for Waiver Pursuant to INA § 212(i)*, dated November 22, 2003. The AAO notes that the record reflects that the applicant and her spouse face financial difficulties in their current situation and that the applicant's spouse grew up in poverty. *Id.* at 1; *see also Declaration of Everardo Contreras*. The record indicates that the applicant and her spouse currently live with the mother and family members of the applicant's spouse and that, in Mexico, they would likely reside with the mother and family members of the applicant. *Declaration of Everardo Contreras* at 3. The AAO

finds, therefore, that the record fails to establish that the financial situation facing the applicant and her spouse in Mexico presents a significant loss in comparison to the couple's current financial situation.

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* 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 separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 she 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.