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U.S. Department of Homeland Security  
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U.S. Citizenship  
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SEP 24 2007

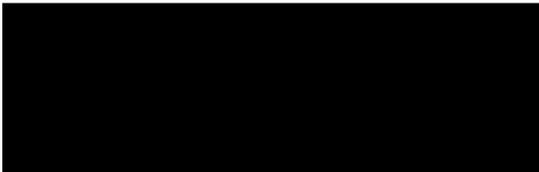
IN RE:



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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Phoenix, Arizona, 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 having procured admission into the United States by fraud or willful misrepresentation on July 24, 1999. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director concluded that the applicant failed to establish that her spouse would experience extreme hardship upon the applicant's removal from the United States. The application was denied accordingly. *Decision of the Acting District Director*, dated September 23, 2005.

On appeal, counsel asserts that the acting district director erred in both fact and law. He states that the decision relied on case precedent (*Matter of Mansour*) that courts have recognized as "unexceptional". *Younghee Na Huck v. Attorney General of U.S.*, 676 F. Supp.10, 13 (D.D.C., 1987). Counsel also states that the decision failed to recognize the totality of the circumstances in the case that if examined, would meet the statutory threshold. Counsel requests 60 days to submit a brief. *Form I-290B*, dated October 26, 2005.

The AAO notes that on July 19, 2007, the AAO sent counsel a letter by fax requesting that the brief and/or additional evidence in the applicant's case be sent to the AAO within five business days. No additional documentation was received and the record is therefore considered complete.

The record indicates that on July 24, 1999, the applicant presented fraudulent documents to an immigration officer when applying for admission to the United States. The applicant presented a letter and pay stubs from an employer in Ciudad Juarez, Mexico. During secondary inspection she admitted that these documents were fraudulent and was allowed to withdraw her application for admission.

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

- (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 that:

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record of extreme hardship includes the following documentation: a list of family members residing in the United States; a projected statement of changes in family revenue were the applicant to be removed from the United States; copies of the applicant's spouse's medical reports, copies of the applicant's children's birth

certificates and a psychological evaluation by [REDACTED]. The list of family members living in the United States shows that the applicant's spouse's immediate and extended family reside in the United States, with many living in Arizona near the applicant's spouse. The projected statement of revenue was compiled by a certified public accountant, [REDACTED] found that if the applicant were removed to Mexico, the applicant's spouse would incur \$1,936.00 in added expenses per month. [REDACTED] Report, dated October 8, 2005. He states that the added expenses would include: childcare, housing cost in Mexico, international calling cards, airfare, fuel costs to drive to Mexico and auto insurance in Mexico. He also states that the applicant's spouse's current income would not be able to pay for these expenses. *Id.* The AAO notes that no documentation was submitted to show that the applicant could not find employment in Mexico to help with these added expenses and/or her living expenses in Mexico. In addition, no documentation was submitted to support the claims made about the applicant's current financial obligations. The record does contain a medical report for the applicant's spouse. The AAO notes however, that no documentation was submitted explaining the report or the results shown.

In support of the emotional hardship felt by the applicant's spouse, the applicant submitted a psychological evaluation from [REDACTED] states that the applicant's spouse is very worried about the applicant's possible deportation and is experiencing insomnia, irritability, headaches and is unable to concentrate at work. *Psychological Evaluation*, dated May 3, 2005. She states that the applicant's spouse is extremely distraught about the possibility of being separated from his wife and is concerned that he will not be able to care for his children. *Id.* [REDACTED] concludes that the applicant's spouse will not be able to emotionally handle the challenges of organizing the family's home and that the applicant's spouse and children will suffer severe and far reaching economic, emotional and academic hardships due to the extreme stress of life without their mother. *Id.* The AAO notes that much of the psychological evaluation focused on the applicant's children and, as stated above, hardship the applicant's children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. The AAO also notes that although the input of any mental health professional is respected and valuable, the submitted report is based on one interview of the applicant's family. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. Thus, the AAO finds that the record does not support a finding of extreme hardship to the applicant's spouse as a result of the applicant being inadmissible to the United States.

The only discussion regarding the possibility of the applicant's spouse relocating to Mexico to reside with the applicant is found in the psychological evaluation. [REDACTED] states that the applicant's spouse is concerned about his ability to work in Mexico because he has lived and worked in the United States for 20 years. *Id.* The AAO notes that no documentation was submitted to support the applicant's spouse's concerns. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Therefore, the AAO cannot find that the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

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.

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.