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U.S. Citizenship
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Services

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FILE: [redacted] Office: DALLAS, TEXAS Date: **APR 24 2008**

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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Dallas, Texas, 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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that Citizenship and Immigration Services (“CIS”) erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act because, when confronted with his criminal history during the interview, he immediately retracted his untruthful statement that he had never been arrested. Counsel further asserts that the applicant qualifies for a waiver under section 212(i) of the Act because his wife would suffer extreme hardship if she relocated to Mexico with her husband and also states that if separated from him, she “would suffer more without him than the average spouse.” In addition to evidence submitted with the waiver application, counsel submitted with the appeal documentation concerning the applicant’s wife’s current medical condition and affidavits from the applicant and his wife concerning the nature of the applicant’s misrepresentation and the hardships they would suffer if the applicant were removed from the United States.

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 [Secretary] may, in the discretion of the [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 [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.

The record indicates that the applicant was arrested on prostitution charges on January 24, 2002 and was convicted on July 10, 2002. On his application for Adjustment of Status (Form I-485) he stated that he had never been arrested, and while under oath during his interview with an immigration officer on February 7, 2006, he again stated that he had never been arrested. The applicant does not deny that he failed to disclose this arrest, and states that he concealed the arrest because his wife was present and he was embarrassed to tell her what he had done. *See affidavit of* [REDACTED] dated August 24, 2006. The applicant’s failure to disclose his arrest and conviction on prostitution charges constitutes misrepresentation of a material fact

because the conduct for which he was convicted renders him inadmissible under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i). The applicant did not timely or voluntarily retract the untruthful testimony, and admitted to the arrest only after being confronted with a record of this arrest by the immigration officer conducting the interview. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a 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 imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. Supreme Court additionally 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.

In the present case, the record reflects that the applicant is a forty-eight year-old native and citizen of Mexico who has resided in the United States since 2000, when he entered with a border crossing card. The applicant's wife, a U.S. Citizen by birth, is thirty-six years old and claims to suffer from various ailments, including back pain, skin ailments, severe migraine headaches, sinusitis, and allergies. *See affidavit of* [REDACTED] dated August 24, 2006. Counsel states that the applicant's wife underwent an MRI which revealed problems with her spine, but she had not yet received any treatment for the condition at the time the appeal was filed.

Counsel asserts that the applicant's wife would suffer extreme emotional, physical, and economic hardship if the applicant were removed to Mexico. In support of the appeal, counsel has submitted affidavits from the applicant and his wife and documents related to an MRI of her lumbar spine conducted on August 18, 2006. Evidence submitted with the waiver application includes letters from the applicant, his wife, and friends and relatives; copies of utility bills and automobile insurance documents; medical records and bills for the applicant's wife; copies of the applicant's pay stubs and their joint tax return for 2005; and copies of family photographs. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the applicant's wife would suffer extreme hardship if her husband were removed from the United States because she would not have access to the medical treatment she needs, and states: "Neither she nor her doctor will know the extent of the anticipated treatment until next month." Since that time, no evidence has been submitted indicating the exact nature of the problems with her spine and what treatment, if any, is needed. Further, the applicant submitted with the waiver application information concerning various medications the applicant's wife has been prescribed, a list of other medications she has taken, bills from a clinic where she received care, and records from her doctor dating back to 1999. No specific evidence was provided to explain her current condition, such as a letter in plain language from her physician describing any current medical condition, the treatment and medication needed, and any assistance she would need from her spouse during and after treatment. The AAO is not in the position to evaluate medical records and reach conclusions concerning the diagnosis or severity of a medical condition, the treatment necessary, or the prognosis for recovery. There is also no evidence on the record concerning access to medical care in Mexico. Without such evidence, the record does not establish that the applicant's wife suffers from a serious medical condition for which she would not have access to treatment if she relocated to Mexico.

Counsel also states that the applicant's wife would suffer financial hardship in Mexico because she "does not speak Spanish well enough to obtain a good job." He further states that separation from her family and from her church would contribute to the hardship she would experience. In her affidavit, the applicant's wife states, "the church is a large part of my life, and I will hurt being away from fellow members of the congregation." No evidence was submitted concerning economic conditions in Mexico or the applicant's ability to find employment in Mexico and support his wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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). Further, 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. Moreover, although the applicant's wife would be separated from her church and family members in the United States, there is nothing on the record to indicate that the emotional effects of this separation would be more serious than that normally experienced by family members as a result of deportation or exclusion. The emotional and financial hardship the applicant's wife would suffer, while unfortunate, appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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).

Counsel additionally asserts that the applicant's wife would suffer extreme hardship if her husband were removed from the United States because she would lose her health insurance and be unable to pay for the medical treatment she needs. There is no evidence on the record concerning what type of health insurance the applicant's wife has or establishing what medical treatment she needs. However, in her affidavit the applicant's wife states that if she went to Mexico with the applicant, she "would lose [her] medical and dental insurance, which [they] have through [their] employers." From this statement, it appears that the applicant's wife has insurance through her own employer and is not dependent on the applicant for coverage and would therefore have access to medical care if she remains in the United States without the applicant.

Counsel additionally asserts that the applicant's wife would suffer emotional hardship if the applicant were returned to Mexico and she remained in the United States. There is, however, no evidence on the record to establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

The emotional and financial hardship the applicant's wife would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.