

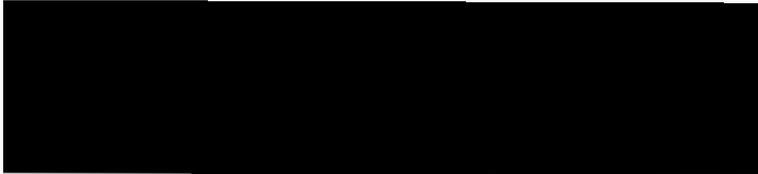
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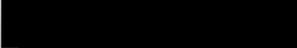
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date:

**JAN 09 2008**

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), 8 U.S.C. section 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 District Director, Los Angeles, 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 the Mexico who was found 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Alien for Relative Petition (Form I-130) filed by her U.S. citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The record reflects that the applicant attempted to obtain admission into the United States on February 27, 1988 using another person's immigration documents. The applicant was allowed to voluntarily depart from the United States, but re-entered without inspection approximately one month later.

On December 8, 1992, the applicant's spouse, [REDACTED] a naturalized U.S. citizen born in Mexico, filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. The petition was approved on February 3, 1993. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on April 15, 1999. That application was denied for failure to respond to a request for evidence July 14, 2001, but the matter was reopened on April 27, 2002. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 21, 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated September 6, 2005.

On appeal, the applicant submits declarations from her spouse and her children. The record also contains employment, tax and financial records submitted with the applicant's adjustment application. The entire record was considered in rendering a decision on the appeal.

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.

As stated above, the record reflects that the applicant attempted to obtain admission into the United States on February 27, 1988 by using another person's immigration documents. The applicant has not disputed that she is inadmissible under section 212(a)(6)(C) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The

applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals 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.

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).

The Ninth Circuit Court of Appeals has 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his affidavit, the applicant's spouse asserts that if the applicant is not allowed to stay in the United States, the family's "life would be empty and meaningless." He maintains that he and his spouse have been together their whole adult life, and that it would be an "unspeakable disaster" if they cannot remain together. The applicant's spouse contends that if the applicant is not allowed to stay, he will return to Mexico but their children will remain in the United States. He asserts that this will cause "disastrous upheaval" for the family. He states that he will have to abandon his employment and the "stability" of his life in the United States for

uncertain employment prospects in Mexico. In their affidavits, the applicant's children make similar assertions.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological or emotional consequences would constitute extreme hardship when considered with other hardship factors. Rather, the hardship described by the applicant and her spouse is the typical result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. The U.S. court decisions 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). 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.

The AAO recognizes that the applicant's spouse is employed and that he would lose his job if he returned to Mexico. However, the applicant has not demonstrated that he will be unable to find work and continue the financial support of his spouse and children from Mexico. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Without documentary evidence to support his claims, the assertions of counsel also will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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 rests 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.