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U.S. Citizenship  
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[REDACTED]

FILE:

Office: LOS ANGELES

Date: JAN 11 2008

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), 8 U.S.C. section 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, 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 procured 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 his 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 and children.

The record reflects that the applicant attempted to obtain entry into the United States on December 12, 1993 at Calexico, California. The applicant was charged in U.S. District Court for the Southern District of California on December 12, 1993 with Making a False Claim to U.S. Citizenship in violation of 18 U.S.C. § 911 and Attempted Illegal Entry in violation of 8 U.S.C. § 1325. The applicant pled guilty to the charge of Attempted Illegal Entry and was sentenced to 45 days in prison. The False Claim to U.S. Citizenship charge was dismissed.

The applicant initially entered the United States without inspection on January 15, 1983. The applicant was last admitted to the United States pursuant to advance parole on December 8, 1995. On March 16, 1990, the applicant's mother, [REDACTED], filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on April 27, 1990. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) in May 1995. That application was denied for abandonment on April 28, 2001.

The applicant and his spouse, [REDACTED], were married in the United States on May 1, 2002. The applicant's spouse, a native of Mexico who became a naturalized U.S. citizen on April 12, 2000, filed a Petition for Alien Relative on the applicant's behalf on August 8, 2002. **The applicant filed an Application to Register Permanent Resident or Adjust Status on the same date. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) in December 2004.**

The district director noted that the applicant "attempted admission into the United States through the port of entry at San Ysidro on December 12, 1993 by making a false claim to United States citizenship," and found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. *Decision of District Director*, dated August 31, 2005. 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. *Id.*

On appeal, counsel contends that the district director ignored substantial evidence supporting the request for a waiver. Counsel asserts that although the applicant's spouse was born in Mexico, she was raised in the United States and her entire family resides here. Counsel observes that the applicant has a stable job in the United States that provides money and health insurance for his spouse and children. Counsel contends that the applicant's spouse is financially dependent on her husband, and that he would not be able to support two households if he is returned to Mexico. Counsel maintains that these and other hardship factors are sufficient to merit reconsideration of the district director's decision.

Counsel also asserts that it is unclear from the decision if the applicant has been found inadmissible for misrepresentation under INA § 212(a)(6)(C)(i) or for falsely claiming U.S. citizenship under INA § 212(a)(6)(C)(ii), for which no waiver is available. Counsel observes that the applicant never pled guilty to making a false claim of U.S. citizenship and contends that independent evidence to support such a charge has not been proffered.

The record contains a declaration from the applicant's spouse, identification documents, birth and marriage records, employment records, tax records and family photographs. 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.
- (ii) Falsely claiming citizenship.—

(I) in General

Any alien who falsely represented, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The AAO notes that that the provisions of section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship were added to the Act as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208 (IIRIRA). The Act currently allows no waiver for false claims to U.S. citizenship. However, if the false claim was made prior to the enactment of IIRIRA, September 30, 1996, it is treated as misrepresentation under section 212(a)(6)(C)(i) of the Act and the alien is eligible to apply for a waiver under section 212(i). *See Memorandum by Joseph R. Green, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

In this case, there is sufficient evidence in the record to conclude that the applicant misrepresented a material fact by falsely claiming U.S. citizenship in 1993. Court documents and other documents in the applicant's administrative file ( ) show that the applicant willfully and falsely represented himself as a citizen of the United States when he was questioned by an immigration inspector at the Calexico, California Port of Entry on December 12, 1993. Although the applicant was not convicted of False Claim to U.S. Citizenship in violation of 18 U.S.C. § 911, he was convicted in United States District Court for the Southern District of California on December 13, 1993 and sentenced to 45 days in jail for violation of 8 U.S.C. § 1325 (Attempted Illegal Entry). In the complaint upon which the conviction was based, the charge against the applicant for violation of 8 U.S.C. § 1325 states that the applicant "did

knowingly and willfully attempt to enter the United States by willful false and misleading representation and willful concealment of material facts.” Consequently, the evidence supports the district director’s determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(a)(6)(C) 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 his 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).

U.S. courts have 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 her affidavit, the applicant's spouse asserts that she and her children depend on the applicant for financial and emotional support. She indicates that the applicant's entire immediate family is in the United States. She contends that since her husband has been living in the United States since 1984, he will face difficulty in finding work and adjusting to life in Mexico. She states that she would probably be forced to accept public assistance without the applicant's financial support. She asserts that she cannot go with her husband to Mexico because they would be unable to find jobs there.

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 she 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 his 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 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. The record also demonstrates that the applicant's spouse is employed. 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).

Likewise, the applicant has failed to demonstrate that his spouse would suffer extreme hardship if she relocated to Mexico. The statement by the applicant's spouse that she and her husband would be unable to

find jobs there to support themselves and their children is insufficient to meet the applicant's burden of proof for the reasons stated above.

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 his 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 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 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.