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U.S. Citizenship
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[REDACTED]

FILE:

Office: PHOENIX, ARIZONA

Date: JAN 15 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 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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a visa obtained by giving false information, and 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for departing the United States after accruing over one year of unlawful presence. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband, children, and grandchildren.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 23, 2006.

On appeal, the applicant, through counsel, asserts that the District Director "erred in denying the request for waiver under section 212(a)(6)(C)(i) of the Act. The applicant presented more than sufficient evidence of extreme hardship to the qualifying relative and the waiver should have been granted." *Form I-290B*, filed March 20, 2006.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, a psychological evaluation on the applicant's husband by _____ and various letters of reference from the applicant's family and friends. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
...
 - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Counsel asserts that the applicant “did not stay in the U.S. from 1996 until her departure in 2000 as implied in the decision...Rather, she was crossing the border numerous times each month during that time...”; therefore, “she never accumulated a year of continuous unlawful presence as alleged in the denial.” *Brief*, page 3, filed April 13, 2006. However, the AAO notes that counsel failed to provide any evidence of the applicant’s numerous crossings; therefore, the applicant has failed to meet her burden of proof that she is not inadmissible under section 212(a)(9)(B) of the Act. The AAO finds that since the criteria for waivers under sections 212(a)(9)(B)(v) and 212(i) are the same, only one extreme hardship analysis will be provided.

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

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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...

The AAO notes that the record contains several references to the hardship that the applicant’s United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant’s children will not be considered, except as it may cause hardship to the applicant’s spouse.

In the present application, the record indicates that the applicant and [REDACTED] married on May 5, 1981, in Mexico. On August 3, 1981, the applicant’s daughter, [REDACTED] was born in Mexico. On [REDACTED]

September 15, 1983, the applicant's daughter, [REDACTED], was born in Mexico. On December 27, 1989, the applicant's son, [REDACTED], was born in Mexico. On January 10, 1996, the applicant's son, [REDACTED] was born in Mexico. In 1996, the applicant entered the United States without inspection. The applicant applied for a B1/B2 visa/Border Crossing Card, under the name of [REDACTED] claiming she was a single, unmarried woman. On May 4, 2000, the applicant received a B1/B2 visa/Border Crossing Card, and reentered the United States in February 2001, using the Border Crossing Card under the name of [REDACTED]. On February 12, 2001, the applicant's husband filed a Form I-130 on behalf of the applicant.¹ On August 20, 2004, the applicant's husband became a United States citizen. On September 8, 2004, the applicant's husband filed another Form I-130 on behalf of the applicant.² On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On January 12, 2005, the applicant's Form I-130, under the name of [REDACTED], was approved. On August 18, 2005, the applicant's second Form I-130, under the name of [REDACTED], was approved. On February 15, 2006, the applicant filed a Form I-601. On February 23, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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 asserts that the applicant's family will suffer extreme hardship if she is removed from the United States. *Brief, supra*. Counsel states the applicant and her husband "have been married for over twenty years and they have four children ranging in ages from twenty four to age five. The applicant is a stay-at-home mom with no real job skills, while her husband maintains steady employment...The applicant's husband has progressed to an important position at his employment and works not only days but often into the night. It is a supervisory position." *Id.* at 2. The AAO notes that the applicant's husband works as "the on-site general manager of 1800 acres...[and his] work schedule requires him to be available at all times." *Letter from [REDACTED] Farms*, dated December 29, 2005. Counsel claims the applicant's husband

¹ The applicant's first Form I-130 was filed under the name of [REDACTED]."

² The applicant's second Form I-130 was filed under the name of [REDACTED]."

“has no contacts with the closed employment system in Mexico” and it would be difficult for him to find employment that could sustain the family. *Brief, supra* at 5. The AAO notes that the applicant’s husband has almost fifteen years experience working on a farm, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the applicant’s husband is a native of Mexico, who spent the majority of his formative years in Mexico, he speaks Spanish, and it has not been established that the applicant and her husband have no family ties in Mexico. The applicant’s husband states that in the United States they “have a better opportunity of having a long life together...Here [he] makes] enough money to support [his] whole family without [the applicant] having to work.” *Affidavit from*

dated February 14, 2006. The applicant’s husband states “[i]f [he] were to lose [the applicant] it would devastate [him].” *Id.* Counsel states the applicant’s husband was diagnosed with Post Traumatic Stress Disorder. *Brief, supra* at 2. states the applicant’s husband “is presently, constantly anxious and worried about the physical and emotional welfare of [the applicant]...Presently the anxiety and panic reactions are so intensified the post traumatic stress reactions, that [he] is experiencing physical illness, sleep disturbance and attitudes of ‘why bother or even try’.” *Assessment Report fro PhD*, undated. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant’s husband and a psychotherapist. There was no evidence submitted establishing an ongoing relationship between the psychotherapist and the applicant’s husband. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychotherapist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. The AAO notes that the applicant’s children submitted letters regarding the hardship they would suffer if the applicant is removed from the United States; however, as noted above, the applicant’s children are not qualifying relatives for a waiver under section 212(i) of the Act. Additionally, the AAO notes that two of the applicant’s children, and are adults and married with their own families, and the applicant’s third child, turned 18 years old on December 27, 2007. It has not been established that the applicant’s fourth child, who is 11 years old, could not join her in Mexico, or that he would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO finds that counsel has failed to establish extreme hardship to the applicant’s United States citizen husband if he accompanies the applicant to Mexico.

In addition, counsel does not establish extreme hardship to the applicant’s husband if he remains in the United States, maintaining his full-time employment. As a United States citizen, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s husband states “[s]ince [he] work[s] odd hours and not having [his] wife at home that could affect [their] children’s lives because [he] won’t be able to help them with their homework, feed them properly, wash their clothes and wouldn’t be able to be at their side much and talk with them.” *Affidavit from* *supra*. The AAO notes that only one of the applicant’s children, is a minor, and it has not been established that the applicant has no family in the area that could help care for her youngest child. Additionally, it has not been established that the applicant’s older children could not help care for their younger sibling. The AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held

that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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, 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, *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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal 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(a)(6)(C)(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.