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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX, ARIZONA

Date: MAY 12 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)

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, 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 last entered the United States in July 1994 and 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 son of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) so that he and his wife and children can remain in the United States with his mother and other family members.

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. *See Decision of District Director* dated April 13, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) erred in failing to thoroughly analyze the facts and evidence in the case and in finding that the applicant had not established that his mother would suffer extreme hardship if he is denied a waiver. Specifically, counsel claims that CIS erred in concluding that hardship to the applicant or his U.S. Citizen children could not be considered, and states that the indirect consequences of these hardships on the petitioner should be considered. Counsel further asserts that CIS erred by incorrectly relying on certain decisions of the Board of Immigration Appeals (BIA) and by failing to consider hardship factors outlined in other BIA decisions. Lastly, counsel asserts that medical evidence submitted in support of the appeal was summarily disregarded by the CIS.¹

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 AAO notes that the record contains several references to hardship to the applicant and his children, including two U.S. Citizen children and two who are applying for adjustment of status with the applicant.

¹ Counsel also indicates on appeal that a brief would be sent to the AAO within 30 days. There is no evidence in the record that the brief was filed. On April 4, 2008 the AAO sent counsel a facsimile asking for a copy of the brief. There has been no response, therefore, the record is considered complete.

Section 212(i) of the Act provides for a waiver of inadmissibility only if extreme hardship to a U.S. Citizen or permanent resident spouse or parent is established. It is noted that Congress did not include hardship to an alien or an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant and his children will not be separately considered, except as it may affect the applicant's mother.

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-nine year-old native and citizen of Mexico who has resided in the United States since 1992 and last entered the United States without inspection in July 1994. The applicant's mother is a seventy-three year-old native of Mexico and naturalized U.S. Citizen who has resided in the United States for approximately thirty years. On July 27, 1994, the applicant appeared for an interview at the U.S. Consulate in Ciudad Juarez, Mexico in connection with an immigrant visa application. At that time he admitted that he and his mother had knowingly misrepresented his marital status when she filed a petition on his behalf in 1992 so that he could obtain permanent residence as the unmarried son of a Lawful Permanent Resident. Because of this misrepresentation of a material fact, CIS determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel asserts that the applicant's mother would suffer extreme emotional, physical, and economic hardship if she were to relocate to Mexico with the applicant. Evidence submitted with the waiver application includes affidavits from the applicant and his mother, letters from the applicant's wife and two daughters who are applying for adjustment of status with the applicant as derivative beneficiaries, birth certificates and school

records of the applicant's children, a letter from the applicant's mother's doctor stating that she suffers from diabetes mellitus and its complications, income tax returns and documents concerning the applicant's mortgage and automobile loans, and letters in support of the applicant and his family from friends and members of the community. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the applicant's mother would suffer extreme psychological hardship if she is separated from the applicant and states, "The applicant lives near his mother's home. All of his siblings live within miles from each other. The family is very close and fear living apart." *Counsel's brief in support of the waiver application* at 6. Counsel additionally asserts that the applicant's mother is extremely close to her grandchildren, and "the thought of losing her son is devastating, the thought of losing her grandchildren is something that she feels she could not handle." *Brief* at 3.

An affidavit from the applicant's mother further states,

Now that time has passed and now that I am older I need my family with me, I need their emotional and financial support. I am asking for a re-consideration and an opportunity for my son and his family to remain in the United States and also my health is not favorable . . . *Affidavit of* [REDACTED]

There is no additional evidence on the record indicating that the applicant's mother would experience emotional or psychological hardship if she were to remain in the United States and the applicant were returned to Mexico. The evidence on the record does not 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 a relative's removal or exclusion. Although the depth of her distress over the prospect of being separated from her son and his family 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 thus the familial and emotional bonds, exists.

The record also contains a letter from the applicant's mother's doctor stating that she is diabetic and suffering from complications such as digestive problems, weight loss, and leg pain, and that she required assistance with her daily activities after a surgery in 2006 for a work-related injury to her ankle. *See letter from Dr.* [REDACTED] dated March 29, 2006. The AAO notes, however, that it appears the applicant's mother has other family members in the United States who may be in a position to provide her with the support she needs. Counsel states that the applicant's siblings live near his mother and that the family is very close. No evidence was submitted to indicate that these family members are unable or unwilling to provide the applicant's mother with any emotional, physical, or emotional support that she would need.

Counsel additionally asserts that the applicant's mother would suffer extreme hardship if she returned to Mexico because she has resided in the United States for nearly thirty years and has no family or community ties in Mexico. *Brief* at 2. Counsel further asserts that the applicant's mother would suffer financial hardship in Mexico and would be unable to find work because of her age and economic conditions there. Furthermore,

counsel claims that the economic and political conditions in Mexico, including the high rate of poverty and violent crime, would contribute to the hardship she would experience, and should she return there with the applicant, “a bleak financial future is expected.” *Brief* at 7-8. The AAO notes that the applicant worked for the Mexican government prior to moving to the United States and was also employed with a credit card company. *See Affidavit of [REDACTED] I-130 petition filed in 1992 listing the applicant’s place of employment in Mexico.* No evidence was submitted to support an assertion that the applicant would be unable to find employment in Mexico and support his mother if she relocated there. Although it appears from the information submitted concerning Mexico’s economic conditions that relocating to Mexico would have a negative impact on the standard of living and financial situation of the applicant’s mother, 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.

Further, although counsel states that the applicant’s mother has strong family ties in the United States and the applicant’s siblings live near her, no evidence was submitted to support this assertion, such as birth certificates and documentation establishing their immigration status, affidavits from these family members describing how much contact they have with the applicant’s mother, or family photographs documenting the ties between the applicant’s mother and her other relatives in the United States. 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 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).

It appears from the record that any physical, emotional, or financial hardship to the applicant’s mother would be the type of hardship that family members would normally suffer as a result of removal 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.