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20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES

Date:

NOV 03 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)

ON BEHALF OF PETITIONER:

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 Mexico who attempted to enter the United States at San Ysidro, California, on December 23, 1995 by presenting a fraudulent Mexican passport and U.S. visa. The applicant was ordered excluded and was returned to Mexico on December 28, 1995. He reentered the United States without inspection in January 1996 and has remained in the United States since that date. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to gain admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and 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), in order to remain in the United States with his wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 11, 2006.

On appeal, the applicant states that his wife would suffer extreme hardship if his waiver application is denied. *See Declaration of [REDACTED]* dated June 5, 2006. Specifically, he states that he and his wife have become a team and have worked hard to offer their children a good, stable life. He states that if he is removed from the United States, it would be mentally, physically, and economically devastating for his wife and children. In support of the appeal the applicant submitted letters from himself and his wife, birth certificates for his wife and daughters, employment letters for him and his wife, and family photographs. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 references to the hardship that the applicant's children would suffer if the waiver application is denied. Section 212(i) of the Act provides that a waiver of inadmissibility is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying

relative, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, 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.

In the present case, the record reflects that the applicant is a thirty-one year-old native and citizen of Mexico who has resided in the United States since 1996, when he entered the country without inspection. The applicant's wife is a twenty-nine year-old native and citizen of the United States whom the applicant married on April 10, 2001. The applicant and his wife reside in Panorama City, California with their U.S. Citizen daughters.

The applicant asserts that if he is removed from the United States, his wife and children would suffer extreme financial and emotional hardship. He states:

If I am forced to be out of the country without my wife and children, not only would this cause the destruction of my family but it would also cause great economic hardship also. If I take my children with me to Mexico where I have little family, friends or resources, the devastation would be just as great if not greater. **My wife would be faced with supporting our home and daughters on her own.** Declaration of [REDACTED] dated June 5, 2006.

The applicant's wife states that the applicant's removal would be devastating mentally, physically and economically for her and her children. She further states:

My husband and children will suffer extremely if they have to reside in Mexico where my husband and I have very little resources to begin a life in Mexico. . . . I can offer them a better life, a better education and medical insurance here in the United States, but I can't do it alone, it would be a financial hardship on me to support a home and two daughters. . . .
Declaration of [REDACTED] dated June 5, 2006.

The AAO notes that no documentation of the applicant's income or the family's expenses was submitted to support the assertion that the applicant's wife would suffer financial hardship as a result of separation from the applicant. Letters from the applicant's employer and his wife's employer dated June 2006 indicate that they both are employed, but do not state how much they earn. 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)). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant additionally asserts that his wife would suffer emotional hardship due to separation from the applicant, but there is no evidence provided concerning her mental health or the potential emotional or psychological effects of such a separation. 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 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 available only 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 exists.

No information or evidence was submitted to support the assertion that the applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant. The applicant and his wife stated that their children would suffer if they relocated to Mexico and had to adjust to a new culture, were separated from family members in the United States, and would face inferior health care and a lower standard of living. Hardship to the applicant's children is relevant to the extent that it would cause or exacerbate hardship to the applicant's wife, the qualifying relative for the waiver. No evidence was submitted concerning conditions in Mexico, family ties in the United States, or any other circumstances that would give rise to hardship in Mexico for the applicant's family members. Therefore, the record does not establish that the applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant.

The emotional and financial hardship the applicant's wife would experience appears to be the type of hardship that a family member 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).

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.

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.