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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA (SANTA ANA) Date: **SEP 22 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:

[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 the matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who 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 admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States without inspection in 1994 and remained in the United States until 1999, when she traveled to Mexico and attempted to reenter by presenting a border crossing card belonging to another individual. The applicant 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 her spouse and children.

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 District Director* dated March 29, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) failed to adequately weigh all the relevant factors when determining that the applicant's husband would not suffer extreme hardship if the applicant is denied a waiver of inadmissibility. Specifically, counsel states that the applicant's husband is unemployed due to an injury at work and suffers from ulcers and irritable bowel syndrome. *See Brief in Support of Appeal* at 2. Counsel further asserts that the applicant's husband and children would suffer extreme hardship if they relocated to Mexico because they would be separated from family members in the United States, would have difficulty adjusting to life in Mexico, and would suffer financial hardship due to the economic conditions there. *See Brief* at 6-7.

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 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 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 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 children would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's 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 (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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 *Hassan v. INS*, *supra*, the court further held 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. 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.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's husband if she were denied admission to the United States. In support of the waiver application and appeal, documentation was submitted including declarations prepared by the applicant and her husband, birth certificates of the applicant's children, a letters from the applicant's children's school, copies of prescriptions and medication bottles for the applicant's husband and daughter, information on irritable bowel syndrome and asthma, a letter from the applicant's daughter's pediatrician, and documentation of the applicant's husband's income from 1988 to 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant is a twenty-eight year-old native and citizen of Mexico who has resided in the United States since 1994, and last entered the United States without inspection in 1999. She married her husband on June 25, 1999 and they have three U.S. Citizen children together. The record further reflects that the applicant's husband is a forty-four year-old native of Mexico and naturalized citizen of the United States. The applicant resides in Santa Ana, California with her husband and three children.

Counsel asserts that the applicant's husband would suffer extreme hardship if he were to relocate to Mexico with the applicant due to the length of time he has resided in the United States and his extensive family ties in the United States and lack of family ties in Mexico. *Brief* at 5-6. Counsel states, [REDACTED] family and community roots are deeply embedded in the United States. . . . Starting over in the country that he left over 25 years ago will be traumatic in it (sic) of itself. Adding to the trauma of the new beginning, [REDACTED] will suffer psychological trauma with his uprooting." *Brief* at 6. Counsel did not submit any evidence to document the applicant's husband's family or community ties in the United States, and did not submit any evidence concerning conditions in Mexico. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *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). Although separation from family members and community ties in the United States might cause the applicant's husband some hardship, there is no evidence on the record to establish that the effects of this separation would be more severe than that normally experienced as a result of removal. The emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Matter of Pilch, supra*.

Counsel additionally asserts that the applicant's husband is currently unemployed due to a work-related injury and has an ongoing workers compensation claim. *Brief* at 2. Counsel further states that the applicant suffers from irritable bowel syndrome and ulcers, conditions that together wreak "havoc on his digestive system" and require him to take medication. Counsel submitted no evidence or information concerning a work-related injury that prevents the applicant's husband from working and no documentation of a workers compensation claim. Further, counsel submitted no medical evidence of the applicant's husband's condition except for copies of prescriptions in his name with no further explanation. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's husband suffers from any condition that would cause him to suffer extreme hardship if he were to relocate to Mexico. The copies of prescriptions with no explanation of the condition the medications are intended to treat are insufficient to establish that the applicant's husband suffers from any serious medical condition. The record does not contain specific evidence, such as a detailed letter from his physician explaining the nature and long-term prognosis of any medical condition and any treatment and medication needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, counsel did not submit any information on the availability of medical care in Mexico to support an assertion that the applicant's husband would not have access to adequate care there.

Counsel asserts that the applicant's husband is currently unemployed due to a work-related injury. As noted above, no documentation was submitted concerning this injury and related workers compensation claim, and the assertions of counsel do not constitute evidence. The applicant's husband states that he is unemployed,

and the applicant's income allows them to maintain the household and balance their budget, and give their children a decent life. *See affidavit of* [REDACTED] *dated February 10, 2006.* The record contains no documentation of their expenses and financial situation or evidence indicating that the applicant's husband would be unable to work if he remained in the United States without the applicant. The applicant's husband further states that poor economic conditions in Mexico would prevent the applicant from finding a job or a home there. *See affidavit of Celerino Martinez dated February 10, 2006.* 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. Although the applicant's husband would likely experience a decline in standard of living if he were to relocate to Mexico with the applicant, the record does not establish that he would suffer economic hardship beyond the common results of deportation.

The applicant's husband states in his affidavit,

I will not be able to maintain and educate my children without her. My life will become miserable without the person that I love. I cannot imagine . . . myself taking the care of three children without her mother. The lack of love, support, and financial stability will for sure end our relationship and destroy me emotionally.

No other evidence concerning his mental health or the effects of being separated from the applicant was submitted. 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 his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife 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 exists.

It appears from the record that any emotional or financial hardship to the applicant's husband 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.