

Identifying data deleted to
prevent or reduce unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H.2

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: **APR 14 2009**

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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 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 procured admission into the United States by fraud or willful misrepresentation on October 3, 1997. The applicant is married to a U.S. citizen and has three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to show that her U.S. citizen spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated March 23, 2006.

On appeal, counsel asserts that the district director's decision shows no analysis of the applicant's spouse's individual circumstances nor does it discuss any of the evidence submitted by the applicant in support of her waiver application. *Form I-290B*, dated April 3, 2006.

The record indicates that on October 3, 1997, at the Calexico, California Port of Entry the applicant presented a Mexican passport and B-2 visitor's visa in the name of [REDACTED] in an attempt to gain entry into the United States.

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.

Section 212(i) of the Act provides that:

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the

applicant or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

On appeal counsel submits a brief, a statement from the applicant's spouse, a letter from the doctor treating the applicant's sister-in-law for cancer, and a letter from the applicant's children's teacher. The applicant's spouse states that he is submitting a new statement of hardship to describe the changes he has gone through in the last year and a half. *Spouse's Statement*, undated. He states that his sister was diagnosed with cancer and has been hospitalized for six months. He states that although he has six siblings, he is the oldest and his parents do not speak English, so he has been the one responsible for meeting with officials in the hospital regarding his sister's condition. He also states that his sister has been hospitalized for six months, he visits her once per week, and the applicant has been a great comfort to him during this time. The applicant's spouse also states that he works and supports the family while his wife cares for their children and if the applicant is not allowed to remain in the United States it would be a disaster because he does not have the time to spend with his children. He states further that because of his sister's condition he has to remain in the United States. In addition, he states that he wants to stay in the United States so that his children can get their education. *Id.* In a statement submitted with the applicant's initial waiver application,

the applicant's spouse states that he is a construction worker that works approximately fifty hours a week. *Spouse's Statement*, dated November 4, 2004. He describes the closeness of his family and the importance of having his children educated in the United States. He states that in Mexico he would not have a job where he could support his family. *Id.*

The AAO notes that the record includes a letter from the applicant's sister-in-law's doctor, Dr. [REDACTED]. Dr. [REDACTED] states that the applicant's sister-in-law is a patient under his care at the Children's Hospital Los Angeles. *Letter from [REDACTED]* dated April 17, 2006. He states that she was diagnosed with cancer and has to remain hospitalized as a result of the complications of her illness. *Id.* The record also includes a letter from the applicant's child's teacher, [REDACTED]. Ms. [REDACTED] states that the applicant plays an important role in the development of her child and that she is an outstanding, responsible, and loving parent. *Letter from [REDACTED]* undated. The record also includes various academic achievement certificates awarded to the applicant's children.

In his brief counsel reiterates the circumstances in the applicant's case and states that the applicant's spouse will suffer severe mental, emotional and psychological hardship if he is forced to endure an extended separation from the applicant. *Counsel's Brief*, dated May 3, 2006. He states that the closeness of the applicant's spouse's family and his residence in the United States for more than thirty years should be considered when evaluating the hardship in his case. Counsel also states that although no evidence regarding the economic conditions in Mexico has been presented, it is common knowledge that the conditions in Mexico are well inferior to those in the United States and administrative notice should be taken of this fact. *Id.* The AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Even if the AAO were to take administrative notice of general or average conditions in Mexico, to support his assertions, counsel must submit country conditions information that establishes what life in Mexico would be like for someone similarly situated to the applicant's spouse, as conditions in Mexico vary.

Based on the current record, the AAO cannot find that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. Counsel failed to submit supporting documentation for the assertions made by himself and the applicant. The record does not show, beyond the applicant's spouse being the oldest child, why one of the applicant's spouse's other six siblings would not be able or willing to aid with his sister's care in his absence. The record also fails to show whether the applicant's spouse, in the applicant's absence, could receive help from his family in caring for his three children. In addition, as stated above, no country condition information was submitted to support the assertions made about conditions in Mexico. Thus, the AAO finds that the applicant has failed to show that her spouse will suffer extreme hardship as a result of her inadmissibility to the United States.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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.

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(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.