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

U.S. Citizenship
and Immigration
Services

H-2

[REDACTED]

APR 21 2009

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grisson
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles (San Bernardino), 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident and he has four U.S. citizen children. The applicant 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 had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, at 3, dated February 27, 2006.

On appeal, counsel asserts that the district director failed to provide the proper legal analysis in denying the application. *Brief in Support of Appeal*, at 3, received April 21, 2006.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse and letters of support. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 28, 1981, the applicant presented a counterfeit lawful permanent resident card while seeking admission to the United States. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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 a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. Counsel states that the applicant's spouse has three U.S. citizen sons, one U.S. citizen daughter, she cares for her mother, she cares for her grandchildren and all of her family resides in the United States. *Brief in Support of Appeal*, at 4-5. Counsel also contends that the applicant's spouse would be unable to maintain her lifestyle outside the United States as economic, political and social conditions are commonly known to be unsatisfactorily poor in Mexico. *Id.* at 6. The applicant's spouse reported in her psychological evaluation that she has no family in Mexico who can help her, her brother there is very poor and she has been in the United States for most of her life. *Psychological Evaluation*, at 3, dated April 11, 2006. The applicant's spouse also stated that she has to care for her diabetic mother, she cooks for her, and she cannot leave her and go to Mexico. *Id.* While the AAO notes counsel's claims of economic hardship, the record does not include substantiating documentary evidence that country conditions in Mexico would result in financial hardship for the applicant's spouse. Without supporting documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The 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). The record also fails to include documentation to establish that the applicant's mother-in-law suffers from diabetes or requires the assistance of the applicant's spouse in her daily life. Moreover, the record does not offer evidence to establish that the applicant's spouse is the only family member able to provide the care she indicates her mother requires. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *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)). The AAO notes that the

psychological evaluation does not address the effect on the applicant's spouse if she returns to Mexico. Although the applicant's spouse would encounter difficulties if she relocated to Mexico, the record contains insufficient evidence to establish that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's role in the family business is critical, the applicant's spouse's role in the business is small because she has to take care of her grandchildren, and she is completely dependant on the applicant for her financial, physical and emotional needs. *Brief in Support of Appeal*, at 6-7. The psychologist states that the applicant's spouse is the primary caretaker of her mother and she does not work regularly in order to care for her mother. *Psychological Evaluation*, at 7. The psychologist states that the applicant has Hepatitis C, his condition requires treatment or it could become life-threatening, his financial situation would be precarious in Mexico, his life may be in danger due to his inability to afford medical care, and the applicant's spouse would fear that he would succumb to his illness. *Id.* at 7. As previously noted, the record does not include sufficient evidence to establish that the applicant's mother-in-law is a diabetic or that her care precludes the applicant's spouse from working. Neither does the record include supporting evidence of the applicant's illness, that he could not receive treatment in Mexico or that he could not obtain employment in Mexico sufficient to support his family from outside the United States.

The psychological evaluation indicates that the applicant's spouse is suffering from Adjustment Disorder of Adult Life with Mixed Anxiety and Depressed Mood, and that a prolonged separation would cause her to develop a full Major Depressive Disorder. *Id.* at 8. To reach her conclusions regarding the mental health status of the applicant's spouse, the psychologist relied, in part, on the following psychometric instruments: Beck Depression Inventory II, Beck Anxiety Inventory, Achenbach Adult Self-Report and Achenbach Adult Behavior Checklist. *Id.* at 1. Based on the record before it and noting that the applicant and his spouse have lived together for more than 30 years, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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 he 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.