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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

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AUG 12 2009

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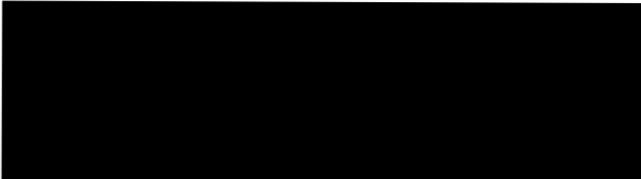
IN RE:



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 APPLICANT:



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. 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and their lawful permanent resident and U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 14, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; statements from the applicant's children; published country conditions materials; medical records for the applicant's youngest child; medical records for the applicant; a Medi-Cal Notification of Action; a statement from the applicant's church; a statement from the applicant; tax returns for the applicant and her spouse; and a tax return, earnings statements, and W-2 Forms for one of the applicant's children. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on January 4, 1982 the applicant attempted to gain admission to the United States by using another individual's U.S. passport. *Form I-213, Record of Deportable Alien*. Based on her presentation of this individual's passport at the port of entry, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver<sup>1</sup> 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. The plain language of the statute indicates that hardship that the applicant or her children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States 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 he resides in Mexico or the United States, as he is not required to reside outside 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.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A, Biographic Information, for the applicant's spouse*. He came to the United States in 1977. *Statement from the applicant's spouse*, dated January 11, 2007. Only the mother of the applicant's spouse lives in Mexico. *Id.* The father of the applicant's spouse is deceased. *Form G-325A, Biographic Information, for the applicant's spouse*. The applicant's spouse states that he has suffered from emotional upset, depression, and stress since he was 13 years old and ran away from his parents' home. *Statement from the applicant's spouse*, dated January 11, 2007. His parents

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<sup>1</sup> Counsel correctly states that the applicant filed a waiver under section 212(i) of the Act. *Form I-290B*. The AAO notes that the District Director erred in finding the applicant to have applied for a waiver under section 212(h) of the Act.

never asked him to return home, and at age 15 he was homeless. *Id.* Although the record does not specify the details as to what transpired, the AAO notes that the applicant's spouse currently has a relationship with his mother in Mexico, as he supports her by sending her money. *Id.* The applicant's spouse also supports two of his daughters and granddaughter, all of whom live with him and the applicant. *Id.* The applicant's spouse states that he would be unable to support his family if he lived in Mexico. *Id.* He notes that as a 56 year old man, he would be discriminated against in Mexico. *Id.* The record includes an internet posting, "Ask CalPers to oppose discrimination in Mexico," by [REDACTED] Lambda Letters Project, dated January 3, 2007, and a wire service story printed in the *Mail Tribune*, dated October 28, 2006; *The Herald, Mexico Edition*, dated October 24, 2006, and *The Los Angeles Times*, dated October 23, 2006. These articles report widespread discrimination, including age discrimination, in hiring practices in Mexico. While the AAO acknowledges that employment discrimination exists in Mexico, it does not find the record to establish that such discrimination would preclude the applicant and her spouse from obtaining some type of employment in Mexico that would allow them to support their family.

Counsel asserts that the applicant has recently been diagnosed with cancer (*Attorney's brief*, dated February 8, 2007). The record includes medical documentation showing that the applicant was found to have a cyst that was highly suspicious for malignancy. *Preliminary Report from Diagnostic Medical Group of Southern California*, dated January 15, 2007. It also indicates that a biopsy was recommended but that the applicant was denied health insurance. *Id.*; *Notification of Action, Los Angeles County Approval of Medi-Cal, State of California*, dated February 2, 2007. Accordingly, the record does not support counsel's claim that the applicant has been diagnosed with cancer. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. 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, such as published country conditions materials, to establish that the applicant would be unable to undergo a biopsy or receive subsequent medical treatment in Mexico.

While the AAO notes that the record documents the applicant's youngest child as having bronchial asthma (See medical records), it fails to establish that she would be unable to receive adequate medical treatment in Mexico. Furthermore, the applicant's child is not a qualifying relative for the purpose of this case and the record fails to document how any hardship the applicant's child may encounter affects the applicant's spouse, the only qualifying relative in this case. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse has lived in the United States since 1977. *Statement from the applicant's spouse*, dated January 11, 2007. The applicant's spouse states that he started drinking alcohol when he was 15 years old and that his alcoholism escalated during his marriage. *Id.* He notes that he has been sober since 1996. *Id.* He believes that because of the applicant's help and presence, he has been able to stay off drinking. *Id.* One of the applicant's children notes that she has lived with her parents all of her life. *Statement from the*

*applicant's child*, dated January 9, 2007. She has witnessed that her father is a depressed person and how her mother talks to him to help him cope with life stresses and to keep him from drinking. *Id.* She states that she could not help her father in this way if her mother was gone. *Id.* If separated from the applicant, the applicant's spouse believes that he would become depressed and anxious and fears that he would start drinking out of depression, loneliness and feeling abandoned. *Statement from the applicant's spouse*, dated January 11, 2007. The applicant's spouse notes that in October 2006, the applicant went on a religious retreat for three days and, in her absence, he felt alone and started to drink. *Id.* He states that he went to the doctor and was prescribed anxiety medication. *Id.* The AAO notes that the record does not include any documentation regarding this treatment. The record also fails to include an evaluation from a licensed healthcare professional documenting the applicant's spouse's claims of suffering from depression or his emotional reliance on the applicant. Going on record without supporting documentary evidence will not meet the burden of proof of 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 acknowledges the emotions of the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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(a)(6)(C) 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.