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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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Services

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FILE:

Office: PHOENIX, AZ

Date: **AUG 27 2009**

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, Phoenix, Arizona, 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 seeking to procure admission to the United States by fraud or willful misrepresentation. The applicant's mother and father are lawful permanent residents and the applicant's spouse is a U.S. citizen. 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 District Director*, at 3, dated March 26, 2008.

On appeal, counsel states that the district director arbitrarily and capriciously denied the waiver application, and he intends to submit a brief, proof of the applicant's parents lawful permanent residence status and a psychological evaluation to establish extreme hardship to the applicant's family. *Form I-290B*, at 2, received April 25, 2008.

The record includes, but is not limited to, the applicant's statement, the applicant's spouse's statement, a copy of the applicant's parents' lawful permanent resident cards, and the applicant's sister-in-law's statement. The AAO notes that the record does not include a brief from counsel or a psychological evaluation. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that in August 1997, the applicant sought to procure admission to the United States by presenting his brother's passport and border crossing card. Based on the applicant's misrepresentation, he is inadmissible to the United States pursuant to 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)(i) 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, father or mother.¹ Hardship to the applicant or his five 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 a qualifying relative must be established whether the qualifying relative resides in Mexico or in the United States, as the qualifying relative 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 a qualifying relative in the event of residence in Mexico. The applicant states that moving to Mexico is not an option for his spouse and children, his spouse has lived in the United States her entire life, the economy in Mexico is poor, the culture shock would be too great, and opportunities are limited. *Applicant's Statement*, dated February 14, 2008. The applicant's spouse states that the applicant has four children from a previous relationship, she and the applicant have one child of their own, her entire family resides in the United States, her son would not be able to adjust culturally to life in Mexico, and there are no close family members to assist with housing and employment in Mexico. *Applicant's Family's Statement*, at 1, dated February 14, 2008. The record does not include documentary evidence of financial, emotional, medical or other hardship should a qualifying relative relocate to Mexico. 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 record also does not include evidence of hardship to the applicant's spouse's son and how this hardship

¹ The AAO notes the errors correctly pointed out by counsel with regard to the district director's discussion of the qualifying relative in the present case.

would affect her or the applicant's parents. The applicant has provided insufficient evidence to establish that a qualifying relative 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 a qualifying relative remains in the United States. The applicant states that he provides financial and emotional stability in his home, he fears that his spouse will not be able to economically and emotionally handle the separation, separation may put a strain on his marriage, and he fears the effect on the emotional development of his spouse and children due to separation. *Applicant's Statement*. The applicant's spouse states that the applicant pays child support for his four children from a previous relationship, she and her child will suffer tremendously without him, she and the applicant are paying for their home, the family would lose their home, she would not be able to comply with the applicant's child support payments, and it would be impossible for her to meet their financial obligations. *Applicant's Family's Statement*, at 1. The record does not include documentary evidence of financial, emotional, medical or other hardship should a qualifying relative remain in the United States. The record does not include evidence of hardship to the applicant's spouse's son and how this hardship would affect her or the applicant's parents. Based on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that a qualifying relative would suffer extreme hardship upon residing 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.