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U.S. Citizenship  
and Immigration  
Services

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H12

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: FEB 02 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 in October 2005. The applicant is married to a U.S. citizen and 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 assertions provided in the affidavit of the applicant's spouse and the evidence in the record did not support a finding of that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated June 28, 2006.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. She states that the applicant's spouse is 67 years old, suffers from many medical ailments and requires the care and support of the applicant. *Counsel's Brief*, dated August 11, 2006.

The record indicates that on July 21, 2005 the applicant entered the United States with a Border Crossing Card. In a sworn statement, taken on March 21, 2006, the applicant stated that she departed the United States in August 2005 and re-entered in October 2005. The applicant stated that she and her spouse married in the United States on November 4, 2005. On November 28, 2005 the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). In addition, the applicant's spouse states that while in Mexico, before their return to the United States in October 2005, they had a religious ceremony to celebrate their marriage. *Spouse's Statement*, dated April 19, 2006.

22 C.F.R. 41.32 states in pertinent part:

(a) Combined B1/B2 visitor visa and border crossing identification card (B1/B2 Visa/BCC)

(1) Authorization for issuance. Consular officers assigned to a consular office in Mexico designated by the Deputy Assistant Secretary for Visa Services for such purpose may issue a border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B1/B2 nonimmigrant visitor visa (B1/B2 Visa/BCC), to a nonimmigrant alien who: (i) Is a citizen and resident of Mexico; (ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding six months...

The AAO finds that when the applicant crossed the border in October 2005 she was already married to her U.S. citizen spouse and thus, was no longer a temporary visitor to the United States, but an intending immigrant. By presenting her border crossing card to gain entry into the United States she misrepresented herself as a nonimmigrant.

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 alien experiences 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.

Counsel states that if the applicant is removed her spouse will suffer extreme and unusual hardship because she is both his caretaker and his best friend. *Counsel's Brief*, dated August 11, 2006. Counsel states that although the applicant's spouse has resided in the United States since 1977, he frequently returns to Mexico to visit family and friends and that on one of these visits he met the applicant. Counsel states that after the death of the applicant's spouse's first wife, the applicant's spouse suffered a heart attack and his blood pressure rose to dangerous levels. She states that once the applicant's spouse was released from the hospital he went into a deep depression and that the applicant was instrumental in guiding her spouse out of this depression. Counsel states that the applicant's spouse suffers from diabetes and that the applicant monitors his medicine, prepares special meals for him, takes him to his monthly check-ups, and helps around the house. Counsel states that the applicant has been so much of a help that the applicant's spouse has been able to go back to work at his mechanic shop, [REDACTED] states that if the applicant is removed her spouse will suffer physically, emotionally and financially. Counsel asserts that the applicant's spouse will fall into a deep depression and will cease to take care of himself and his business. Furthermore, counsel asserts that the applicant's spouse cannot relocate to Mexico because he will not be able to find employment and he will not be able to afford health care. *Id.*

The applicant's spouse states that he is diabetic, takes very strong medication and cannot rely on himself to take care of his personal needs. *Spouse's Statement*, April 19, 2006. The applicant's spouse states that he will suffer extreme hardship if the applicant is removed because he depends on her to cook his meals for his special diet. He also states that he cannot relocate to Mexico because his medical treatment would then be interrupted. He states that his physical, spiritual and economic life would be affected. He also states that he owns his own business, Elias Mechanic Shop. He states that relocating to Mexico after living in the United States for the last 29 years would be an extreme hardship as he feels it would be difficult to find a job and a place to live. *Id.*

The AAO finds that the current record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). 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). The record contains no documentation regarding the applicant's spouse's past medical problems, current medical problems or the existence of his business, [REDACTED] Mechanic Shop. The record also lacks supporting documentation regarding country conditions in Mexico. Therefore, 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.

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.