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FILE: [REDACTED] Office: CHICAGO, IL Date: **FEB 05 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 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 Acting District Director, Chicago, Illinois, 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 entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his family.

The acting 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated March 27, 2006.

On appeal, counsel contends that the information previously submitted and that submitted on appeal have established extreme hardship to the applicant's spouse and child. Counsel also asserts that the applicant's spouse's current pregnancy and the financial impact of his departure from this country should be also considered in establishing extreme hardship in this case. *Counsel's brief*, dated April 13, 2006.

The record includes, but is not limited to, a brief submitted by counsel on appeal; a statement from the applicant's spouse, dated August 13, 2005; letters from the applicant's employers; copies of documents related to property, income, finances, living expenses and taxes for the applicant and his spouse; a letter from [REDACTED] dated June 16, 2005, with medical records for the applicant's son, [REDACTED] and letters from [REDACTED] dated June 23, 2005 and April 6, 2006, with medical records for the applicant's spouse. 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 the applicant pled guilty to using a fraudulent Form I-551, Resident Alien Card, in the name of [REDACTED] in an attempt to enter the United States in 1997. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

A section 212(i) waiver 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. Hardship an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative, in this case, the applicant's spouse. The only relevant hardship in the present case is hardship suffered by the applicant's wife.

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 provides a list of factors relevant in 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 whether she resides in Mexico or the United States, as she 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.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship financially and physically in the United States if the applicant were removed. Counsel states that the applicant's spouse is pregnant with her second child, that she has decreased her working hours to around 34 hours per week, and that she might have to stop working to protect the baby since she has a history of miscarriages. [REDACTED]'s April 6, 2006 letter verifies that the applicant's spouse is nine weeks pregnant, that she has a history of recurrent miscarriage and that the first trimester of her pregnancy is being dealt with cautiously. In her statement, dated August 13, 2005, the applicant's spouse asserts that she had two miscarriages before becoming pregnant for the third time and that she stopped working to take every precaution possible to have a healthy baby. However, her son was born prematurely and had to stay in the hospital three weeks. She also asserts that in order to support the family and to take care of their premature son, the applicant works two jobs and she works night shifts from 3:30 pm to 2:00 am. The submitted W-2 forms for the applicant's spouse show that she earned \$19,666 in 2002, and \$16,854 in 2003 but \$5,656 in 2004 from her employment. The applicant's spouse's paystub from [REDACTED] for the week 3/4/06-3/9/06 shows that she works 34 hours per week at rate of \$8.75 per hour. The applicant's spouse's income from work can be reasonably assumed to be approximately \$15,470 per year. Counsel also submits the applicant's spouse's mortgage (monthly payment of \$1,286.50), utility, medical and living expenses bills to support her assertion that the applicant's spouse would suffer extreme financial hardship if she had to support her family in the United States in the applicant's absence.

The economic hardship faced by the applicant's spouse is relevant in determining whether extreme hardship exists. However, the record contains no documentation showing that the applicant would be unable to find a job and earn sufficient income to assist his spouse in supporting their family from outside the United States or that the applicant's spouse would be unable to obtain financial or other assistance from her family. The AAO notes that counsel states that the applicant's spouse has all her family in the United States and that the applicant's spouse indicates in her statement that her mother takes care of her son in the afternoons.

Counsel also submits a letter from [REDACTED] describing the applicant's spouse's health condition. In her letter, dated June 23, 2005, [REDACTED] states that she is treating the applicant's spouse for anxiety and that the spouse's anxiety and depression will be severely worsened if the applicant is removed. However, while the AAO acknowledges [REDACTED] letter, it notes this evidence fails to indicate the severity of the anxiety and depression experienced by the applicant's spouse, offer a clinical diagnosis of the spouse's mental health that would support a finding of extreme emotional hardship or specify the treatment that [REDACTED] is providing to the applicant's spouse.

The AAO is mindful of and sensitive to the applicant's and his spouse's concerns about maintaining their family and the hardship the applicant's spouse will endure if they are separated. However, it does not find the record to contain evidence that distinguishes the applicant's spouse's situation, if she remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and

child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). In addition, the record reflects that the applicant's spouse has close family in the United States, specifically her parents, who may be able to provide her with emotional support, that of her all family as she alleges; she therefore has a strong support in the event she remains in the United States. Having carefully considered each of the hardship factors, both individually and in the aggregate, it is concluded that the factors in this case do not constitute extreme hardship to the applicant's spouse in the event that she remains in the United States following the applicant's removal.

Counsel also contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico as all of her close family reside in the United States, she is pregnant, and her prematurely-born son needs extensive medical care. Counsel asserts that the applicant's spouse does not have any ties to Mexico because all of her family is in the United States. Counsel indicates that the applicant's spouse is in need of special treatment while she is pregnant because she might be at risk of losing her baby since she has had a history of recurrent miscarriages. The applicant's spouse states that her son was born prematurely, his condition requires a lot of attention from both parents, he would not be able to get the same quality of medical care in Mexico, and therefore, her son's health would be at risk if they relocated.

In support of counsel's assertion that the applicant's spouse needs special treatment for her pregnancy because of her history of miscarriages, [REDACTED] April 6, 2006 letter establishes that the applicant's spouse is currently nine weeks pregnant and has a history of recurrent miscarriages. In support of the claims made by the applicant's spouse that her son needs special medical treatment, the record includes a June 16, 2005 letter from [REDACTED] indicting that the applicant's son was a former 33-week premature infant and needs the services of the NICU Follow-up program. Although the medical record attached to [REDACTED] letter reports that the applicant's son is a healthy baby, the AAO will accept [REDACTED] determination that the applicant's son requires NICU services.

The AAO acknowledges the concerns felt by the applicant's spouse for her own health and while the applicant's son is not a qualifying relative for the purposes of a 212(i) proceeding, the additional stress that her son's medical condition would place on her should she relocate to Mexico. However, the record fails to include any documentation to establish that the applicant's pregnancy could not be medically supported in Mexico or that her son could not receive services similar to those now provided him by the NICU Follow-up Program. The assertions of counsel and the applicant's spouse do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply 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)). Having carefully considered each of the hardship factors, both individually and in the aggregate, as documented by the record, the AAO

concludes that the applicant has failed to demonstrate extreme hardship to his spouse in the event that she relocated to Mexico with the applicant.

In the final analysis, the AAO finds that the applicant has failed to establish that his spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.