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

H-2

[REDACTED]

FILE:

Office: PHOENIX, AZ

Date: **FEB 06 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, 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 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 U.S. citizen. She 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 her family.

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

On appeal, counsel contends that the applicant's removal from the United States would cause extreme hardship to her spouse. Counsel also asserts that the documentation provided in support of the applicant's waiver application provided ample evidence of extreme hardship. *Counsel's brief*, dated November 22, 2006.

The record includes, but is not limited to, a brief submitted by counsel on appeal; statements from the applicant, undated, and from the applicant's spouse, dated May 30, 2006; letters from the applicant's relatives, co-workers, employer and friends; and copies of property, financial and income documents for the applicant and her 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 at the time of her interview for adjustment of status testified that she had used a Form I-551, Alien Registration Card, that did not belong to her to enter the United States in November 2000. On appeal, counsel points out that the offense occurred over five years ago and that the applicant has had no other immigration violations since 2000. The Act, however, does not include a time limit on inadmissibility due to fraud or misrepresentation. 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. Although counsel indicates that the applicant's father lives in the United States, the record does not contain any evidence showing that the applicant's father is a U.S. citizen or lawful permanent resident or that he would experience extreme hardship if the applicant were removed. Therefore, the only relevant hardship in the present case is hardship suffered by the applicant's husband.

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).

In addition, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding

to Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation from one’s family will, therefore, be given appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 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 the adjudication of this case.

Counsel states that the applicant’s spouse is a U.S. born citizen and has two U.S. citizen children from his previous marriage. Counsel does not specifically assert or submit evidence to establish that the applicant’s spouse would suffer extreme hardship if he relocated to Mexico with the applicant.¹ Instead, counsel states that, as a result of the poor economic conditions in Mexico, the applicant will find it very difficult to obtain a job to support and maintain her family or provide her U.S. citizen step-children with basic health services. As proof, he cites the section on Mexico from the United States Department of State Country Reports on Human Rights Practices – 2000. However, as previously noted, hardship the applicant or the applicant’s children experience as a result of the applicant’s inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to the applicant’s spouse. Moreover, counsel fails to submit the State Department report as evidence for the record. 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). Accordingly, the AAO finds insufficient evidence in the record to establish that the applicant’s spouse would suffer extreme hardship if he relocated to Mexico with the applicant.

Counsel also contends that the applicant’s spouse would suffer extreme hardship if he remained in the United States following the applicant’s removal. Counsel submits a statement from the applicant’s spouse who asserts that it would be hard for him if the applicant were removed because she is a big economic support to his family. He states that his children would be very upset, that he

¹ It is noted that the record indicates that the applicant’s spouse is the custodial parent of his children from his first marriage but must provide his ex-wife with reasonable visitation, which might prevent him from moving his 14-year-old daughter to Mexico. The applicant, however, does not raise this as a potential hardship for her spouse, nor document how such an eventuality would affect him and, it has, therefore, not been considered in this matter. In proceedings for an application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

would not be able to have two jobs at the same time because he would have to pay attention to five children by himself. Counsel also contends that the applicant's spouse would need to support the applicant in Mexico because she would not find employment there due to Mexico's present economic situation. However, as previously noted, counsel does not submit any documentary evidence to establish that the applicant would be unable to find a job in Mexico and support herself. *See Matter of Obaigbena, supra*. Moreover, counsel, in support of the applicant's spouse's claim that the applicant is the main economic supporter of the family, submits the applicant's and the applicant's spouse's Form W-2s, Wage and Tax Statements, for 2003 through 2005 and their tax returns. The W-2 forms show that in 2003 the applicant earned \$8,419.50 while the applicant's spouse had income of \$23,674.34; in 2004 the applicant earned \$8,725.24 while her spouse had income of \$21,937.22; and in 2005 the applicant earned \$8,452.50 while her spouse had income of \$12,988.92. The documents do not, therefore, demonstrate that the applicant is the main source of income for the family.

Counsel asserts that the applicant's spouse would suffer hardship if the applicant is separated from the family as the hardship caused by separation of an intact family here in the United States is considerable and more than meets the extreme hardship standard. However, counsel's assertions, as previously noted, do not constitute evidence and the record does not contain the documentation to establish, e.g., an evaluation of the applicant by a licensed health care professional, the impact of separation on the applicant's spouse. Rather, the evidence of record demonstrates that the applicant's spouse will face no greater hardships than the disruptions and difficulties that normally arise when a spouse is removed from the United States. Although the depth of concern and anxiety over the applicant's removal is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The applicant's spouse himself stated, "permanent separation from spouse and child is, *by its very nature*, extreme in the hardship which it imposes." *Statement of [REDACTED]* (July 18, 2002) (emphasis added). The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

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. Accordingly, the record contains insufficient evidence to establish that the applicant's spouse's continued separation from the applicant would result in extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by a denial of the applicant's waiver application. 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. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.

ORDER: The appeal is dismissed.