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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H₂

[Redacted]

FILE:

Office: CHICAGO

Date: JUL 14 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. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 U.S. citizen spouse, [REDACTED], and her U.S. lawful permanent resident mother, [REDACTED].

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.

On appeal, counsel asserts that the applicant's mother relies on her for support. Counsel contends that the applicant's spouse would lose his job and health insurance if he had to move to Mexico. Counsel indicates that the applicant's spouse has resided in the United States since he was 19 years old, and his three siblings reside in the United States. Counsel states that if the applicant's spouse moved to Mexico, he would have difficulty finding a job comparable to his current position. Counsel notes that if the applicant's child moved to Mexico, he would attend inferior schools, and would not have the prospect of attending college. 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 during the applicant's adjustment of status interview on May 18, 2006, she testified in a sworn statement that she purchased a permanent resident card in Tijuana, Mexico for \$1,200. The applicant testified that she presented the purchased permanent resident card to an immigration officer at the San Ysidro, California, port-of-entry on or about September 1, 1997, for admission to the United States. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 spouse or parent in 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [REDACTED], a naturalized U.S. citizen, on August 30, 1997, and she has a U.S. lawful permanent resident mother, [REDACTED]. The applicant's spouse and mother are a qualifying family members for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have a thirteen year old son, [REDACTED].

On appeal, counsel asserts that the applicant's mother relies on her for support. Counsel contends that the applicant's spouse would lose his job and health insurance if he had to move to Mexico. Counsel indicates that the applicant's spouse has resided in the United States since he was 19 years old, and his three siblings reside in the United States. Counsel states that if the applicant's spouse moved to Mexico, he would have difficulty finding a job comparable to his current position. Counsel notes that if the applicant's child moved to Mexico, he would attend inferior schools, and would not have the prospect of attending college.

The AAO will address each of the hardship factors put forth on appeal and with the waiver application. Counsel asserts that the applicant's mother is widowed and lives with the applicant and her spouse. Counsel states that the applicant's mother is an elderly and illiterate person who relies completely on the applicant and the applicant's spouse for financial support. Counsel indicates that the applicant's mother is uncomfortable outside her home, and does not drive, so the applicant must drive her. Counsel notes that the applicant's mother would be devastated if the applicant could not remain in the United States. The AAO finds that counsel's assertions are unsupported by the record. There is no independent evidence to corroborate her assertions, such as a declaration from the applicant or her mother. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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 an affidavit from the applicant's spouse, dated March 30, 2007, which states that he resides in an apartment in Kenosha five days a week, and comes home to Rockford, Illinois on the weekend. He indicates that the applicant's mother takes care of his son until the applicant comes home from work after 6:00 pm. He states that if the applicant had to leave the U.S., he would either have to change jobs so he could live in Rockford with his son and mother-in-law, or he would have to move his son to Kenosha and arrange child care for his son. He contends that these are not good options because he has built up a great deal of seniority with his company and union in Kenosha. He contends that if he moves his son to Kenosha he would have to find childcare and for him and send him to the inferior Kenosha schools. Furthermore, the applicant's spouse asserts that if he moved to Mexico, it would be hard to find employment. He states that if he and the applicant could find employment, it would be at very low level jobs and both of them would make a lot less money. He states that the lifestyle of his family would suffer a great deal. He notes that their son would lose the educational, developmental, and personal opportunities available to U.S. citizens, and would spend his formative developmental years in an inferior school system. As corroborating evidence, counsel furnished the applicant's son's school transcript and evidence that he is enrolled in religious education with the St. Edward Church.

The AAO recognizes that the refusal of the applicant's admission to the United States may cause economic detriment to the applicant's spouse and the loss of his academic aspirations for his son. However, his loss of job seniority or the inability of his son to attend a top ranked school would not necessarily result in extreme hardship. The applicant's spouse has not discussed the type of

employment opportunities available to him in Rockford, Illinois. Nor has he discussed the type of employment opportunities available to him and the applicant in Mexico. Any assertion of hardship based on earning a lesser income in Mexico is only relevant when compared to the cost of living in that country. The AAO notes that U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”).

Furthermore, the applicant's spouse asserts that he and applicant and have several regular monthly expenses which will increase as their son gets older. He states that it would be very difficult to cover all of the expenses on his own. As evidence of their expenses, the applicant furnished copies of monthly rent receipts, medical bills, evidence of car insurance and vehicle registration, various utility bills, and a DISH Network (digital entertainment) invoice. However, the record does not reflect that the applicant's spouse has any expenses that he would be unable to meet on his income alone. The record contains a 2005 Form 1040A, U.S. Individual Tax Return, filed jointly by the applicant and her spouse. The 2005 W-2 Forms attached to the tax returns reflect the applicant's gross income as \$11,416.07 while her spouse's gross income was \$62,948.89. Therefore, the AAO does not find the loss of the applicant's income would result in extreme hardship, when combined with other hardship factors.

The applicant's spouse asserts that if he decides to remain in the United States while the applicant is in Mexico, he will be heart-broken, devastated, and poor. He states that his son is very close to his mother, and he cannot even begin to imagine how to explain her absence to his son. Counsel furnished, as corroborating evidence, copies of the applicant's family photos. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and, based on the record, would not result in extreme hardship. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship

caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

The applicant's spouse asserts in his affidavit that he is very close with his three siblings who reside in the United States, and sees them almost every week. He states that he would feel guilty about depriving his son of the opportunity to grow with his cousins if he moved to Mexico. According to counsel, the applicant has resided in the United States since he was 19 years old. The AAO notes that in *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent's wife spoke Spanish and the majority of her family was originally from the respondent's country of citizenship, Mexico. The BIA stated that based on these factors the respondent's wife "should have less difficulty adjusting to live in a foreign country." The record in the present case shows that the applicant's spouse is a former national and citizen of Mexico. He naturalized to become a U.S. citizen on March 28, 2007, when he was 37 years old. The applicant's spouse states in his affidavit that the applicant resided with their child in Jalisco from November 1996 to August 30, 1997, and he visited her during his vacations from work. He states that his own parents live in Jalisco, near the applicant's mother's home. Given his family ties to Mexico, he should have little difficulty in readjusting to language, culture and residence in Mexico. Accordingly, the AAO does not find that the record demonstrates extreme hardship to the applicant's spouse if he accompanied the applicant to Mexico.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission 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(a)(9)(B)(v) 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.