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U.S. Citizenship
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FILE:

Office: CIUDAD JUAREZ

Date: NOV 05 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 PETITIONER:

SELF-REPRESENTED

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, Mexico, 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 sought to procure admission to the United States through fraud or misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated April 17, 2007.

On appeal, the applicant asserts that she is suffering emotional and physical hardship due to separation from the applicant and needs the applicant to support her financially because of work-related injuries that prevent her from working. *See Letter from [REDACTED] in Support of Appeal.* Specifically, the applicant's wife states that she has been under a doctor's care for injuries resulting from her employment as a hotel housekeeper and was found eligible for disability benefits. *See Letter from [REDACTED]* She further states that she has suffered emotional hardship as a result of separation from the application and her deteriorating health. *See Letter from [REDACTED]* In support of the appeal the applicant's wife submitted a decision of the California Unemployment Insurance Appeals Board in favor of her disability claim. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has held:

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, "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 the 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). 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).

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-three year-old native and citizen of Mexico who attempted to enter the United States on January 20, 2004 by presenting a permanent resident card belonging to someone else. He was found to be inadmissible under section 212(a)(6)(C)(i) of the

Act and removed from the United States on the same day. The record further reflects that the applicant's wife, whom he married on July 3, 2004, is a fifty-seven year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Los Angeles, California.

The applicant's wife states that she has resided in the United States since 1978 and would suffer extreme hardship if she relocated to Mexico because she would be separated from her children and grandchildren who also reside in Los Angeles. She further states that she is in therapy every month for her medical condition and would lose her benefits if she moved to Mexico and would be unable to find employment. When considered in aggregate, the factors of hardship to the applicant's wife also constitute extreme hardship if she were to relocate to Mexico. This finding is largely based on evidence of a significant medical condition for which she is receiving treatment in the United States. Further, the applicant's wife is fifty-seven years old, has resided in the United States for over thirty years, and has two adult children as well as grandchildren who reside in Los Angeles. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). Separation from her children combined with any difficulty the applicant's wife would have finding employment and adjusting to economic and social conditions in Mexico after over thirty years in the United States and seeking medical care for her condition would rise to the level of extreme hardship.

The applicant asserts that his wife is suffering emotional and physical hardship due to being separated from him. The applicant's wife states that she is suffering from a permanent disability due to a work-related injury that prevents her from working and causes her a lot of pain. See letter from [REDACTED] in Support of Appeal. She further states that her injuries have gotten more serious with the passage of time and she intends to seek authorization for additional surgery as recommended by her physician. *Id.* In support of this assertion the applicant submitted copies of medical records and a decision on the California Unemployment Insurance Appeals Board indicating that his wife had undergone surgery in 2006 to relieve pain and swelling related to carpal tunnel syndrome and tendonitis of both wrists and hands and stating that her physician found her to be permanently disabled and the condition unresolved by the surgery. See *Decision of the California Unemployment Insurance Appeals Board* dated October 11, 2006. The Administrative Law Judge found that the applicant's wife had demonstrated that her finger joints were swollen, stiff, and stuck in bent positions and determined that she was disabled and eligible for disability benefits.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The record indicates that the applicant's wife is suffering from a medical condition that is causing pain and preventing her from working and supporting herself financially. The applicant's wife states, however, that she is "is being cared for and sustained" by her four U.S. Citizen children, and the record indicates that she resides with her daughter. The record further indicates that the applicant was removed from the United States in January 2004 on the same day he attempting to enter with a fraudulent permanent resident card and he married his wife later that year in Mexico. There is no evidence that the applicant ever resided with his wife in the United States or supported her financially such that a loss of his income would cause her to experience any financial hardship.

The applicant's wife states that she has suffered "great bouts of emotional despair" due to the applicant's situation, and her distress was exacerbated when the waiver application was denied. *See letter from [REDACTED] in Support of Appeal.* There is no evidence on the record, however, concerning the applicant's wife's mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse's removal or exclusion. Although the depth of her distress over being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Based on the record, any hardship the applicant's wife would experience if he is denied admission and she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act.

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. 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.