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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
(CDJ 2004 654 227)

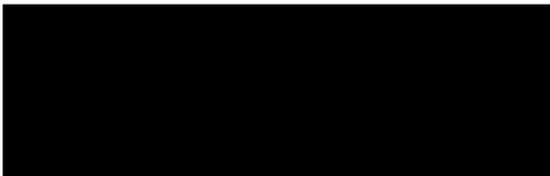
Office: MEXICO CITY (CIUDAD JUAREZ) Date:

OCT 09 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:



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).

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 resided in the United States from June 1996, when he was admitted after presenting a counterfeit border-crossing card, until July 2005, when he returned to Mexico. He was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission to the United States through fraud or misrepresentation and having been unlawfully present in the United States for one year or more. 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 sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), 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 February 16, 2007.

On appeal, counsel for the applicant asserts U.S. Citizenship and Immigration Services (USCIS) erred in applying an incorrect legal standard for evaluating extreme hardship. Specifically, counsel states that the cases cited in the decision of the officer in charge are nearly all 20 to 30 years old and none interprets section 212(a)(9)(B)(i)(II) of the Act. *See Brief in Support of Appeal* at 4. Counsel states that the facts in the present case are distinguishable from the facts of the cases cited because the applicant has no criminal history and was never deported from the United States but left voluntarily. *Brief* at 4-5. Counsel additionally asserts that the applicant's wife is suffering emotional and physical hardship due to her medical condition and medical conditions of her children as well as financial hardship due to loss of the applicant's income. *Brief* at 2-4. In support of the appeal counsel submitted a declaration from the applicant's wife and medical records for the applicant's wife and children. 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
 - (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such 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.

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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship.

Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who resided in the United States from June 1996, when he entered the country using a fraudulent Border Crossing Card, to July 2005, when he returned to Mexico. The applicant's wife is a thirty-five year-old native of Mexico and citizen of the United States whom the applicant married on October 5, 2002. The applicant currently resides in Mexico and his wife resides in Madera, California with their two sons.

Counsel for the applicant states that the applicant's wife is suffering physical, emotional, and financial hardship as a result of being separated from the applicant. In support of these assertions counsel submitted medical records for the applicant's wife and their children. The records for the applicant's wife states that she suffered from hypertension and gestational diabetes while pregnant with her second child, and a letter written by her doctor during her pregnancy suggested reunion with the applicant so that he could assist in her care. *See letter from* [REDACTED] dated June 1, 2006. Additional records indicate that her son was delivered by cesarean section in June 2006 and that she had gallbladder disease and would need to follow up and a consultation with a surgeon for this condition. The applicant's wife states that she needs surgery to remove her gallstones, but has put this off because she does not have medical insurance and cannot afford to take time off from work since she is the sole provider for her children. *Declaration of* [REDACTED]

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 evidence on the record does not establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she remained in the United States without the applicant. The record contains a brief letter from a physician concerning complications during the applicant's wife's pregnancy and medical records documenting the delivery of her son. These records mention that she needs follow-up treatment for gallbladder disease, but provide no more detail concerning this condition. The record does not contain any information about any follow-up treatment or specific evidence concerning the current medical condition of the applicant's wife, such as a detailed letter in plain language from her physician explaining the nature and long-term prognosis of her condition and any surgery or treatment needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

Counsel also asserts that the applicant's wife would suffer hardship as a result of her sons' medical conditions, including asthma and speech delays. The applicant's wife states that her son [REDACTED] has had breathing difficulties since birth and was referred to a specialist for treatment, and her older son [REDACTED] has been evaluated for a significant speech delay and is on a waiting list for speech therapy. *Declaration of* [REDACTED] Counsel submitted copies of medical records, including records from a hospital visit for respiratory distress and an ear infection and physician's notes from visits to their primary care physician for the applicant's younger son. These records contain medical

terminology, abbreviations and handwritten notes, some of which are illegible. The documents submitted do not contain any detailed explanation written in plain language indicating that the applicant's son suffers from a significant medical condition as asserted by counsel. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Documentation was also submitted indicating that the applicant's older son was evaluated for speech delay and was found to have normal hearing but to be in need of speech therapy to address an expressive language delay, with a good prognosis with therapeutic intervention. Although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing a claim of extreme hardship, the evidence in the present case is insufficient to establish that either of the applicant's sons is suffering from such a condition.

Counsel asserts that the applicant's wife is suffering financial hardship without the applicant's income, and the applicant's wife states that she is unable to adequately provide for the family's needs and is deeply in debt. *Declaration of [REDACTED]* She lists her monthly expenses and states that she has outstanding personal loans and credit card debt totaling over \$20,000. No documentation of these debts and expenses was submitted and no information was submitted concerning the applicant's wife's income and employment. 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)). There is insufficient evidence to establish that the financial impact of the loss of the applicant's income is other than a common result of exclusion or deportation, or that it would rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife further states that she is going through emotional turmoil and that every day she is apart from the applicant is heartbreaking. *Declaration of [REDACTED]* 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.

The applicant's wife further states that she and her sons would not have the privileges that citizens have in Mexico because they are U.S. Citizens, and her sons would be deprived the educational opportunities available in the United States if they were to relocate to Mexico. *See Letter from [REDACTED] submitted with waiver application.* The applicant makes no further assertions concerning hardship to his wife if she relocates to Mexico with him. The applicant's wife states that

she needs surgery to remove gallstones, but, as noted above, the record does not contain sufficient evidence to establish that she suffers from a significant medical condition that would result in extreme hardship if she relocated to Mexico. Further, there is no evidence on the record concerning access to medical care or education in Mexico or otherwise support the assertion that the applicant's wife would suffer extreme hardship if she relocated to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Based on the record, any hardship the applicant's wife would experience if he is denied admission to 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 sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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.