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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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[REDACTED]

FILE: [REDACTED] Office: HARLINGEN, TX

Date: SEP 01 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, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Honduras who attempted to enter the United States using a false border crossing card in 1999 and was returned to Mexico at the border. The applicant subsequently entered the United States without inspection in October or November 1999. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated August 15, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on November 18, 1998; two letters from [REDACTED] a letter from [REDACTED] physician; a letter from the applicant; a psychological assessment report; several letters of support; a letter from the couple's child's school verifying enrollment; financial and tax documents; photos of the applicant and his family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien. . . .

The record shows that the applicant attempted to enter the United States using a false border crossing card in 1999. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through fraud.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, [REDACTED] states that his wife is the love of his life and that it would be very difficult for him if her waiver application were denied. He states they have been happily married for eleven years, have a wonderful son together, established a business together, and have a beautiful home. [REDACTED] states he needs his wife in the United States to take care of their son, the house, the paperwork for the business, and the bills. *Letters from* [REDACTED], dated January 22, 2007, and undated.

The couple's son states that he needs his mother to take care of him. He states the applicant takes him to school, makes his food, gets his clothes ready, and takes him to see the doctor. According to the couple's son, the applicant also cleans the house and helps [REDACTED] with the family's truck business. *Letter from* [REDACTED], dated March 16, 2006.

A psychological report in the record states that [REDACTED] has a strong attachment to his family and that he is very concerned about their welfare. The report indicates [REDACTED] fears he will lose his wife and that he is confused about the future. The report concludes that [REDACTED] has Mixed Anxiety and Depressed Mood as a result of his wife's possible deportation. *Multi-Axial Psychological Assessment Report by* [REDACTED] dated March 29, 2008.

A letter from [REDACTED] doctor states that [REDACTED] "is to have surgery as soon as possible for he has varicose veins in his right testicle for which he is to be attended and treated by his wife . . . to help him to his difficult recovery." *Letter from* [REDACTED] dated October 2, 2006.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of his wife's waiver application and is sympathetic to the family's circumstances. However, there is insufficient evidence in the record to show that the level of hardship rises to the level of extreme hardship. Significantly, [REDACTED] does not discuss the possibility of moving to Honduras to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Their situation, if [REDACTED] remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. See also *Perez v. INS*, *supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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).

In addition, the AAO notes that although the record contains ample tax records and financial documents, [REDACTED] who owns his own business, does not make a financial hardship claim. *Letters from [REDACTED] supra*. To the extent counsel contends that "[i]f this application is denied, [REDACTED] will be forced to leave his business," *Letter from [REDACTED] at 3*, dated October 13, 2006, neither the applicant nor her husband makes such a claim. *Letters from [REDACTED] supra*; *Letter from [REDACTED] dated September 14, 2006*.

The unsupported assertions of counsel do not constitute evidence.<sup>1</sup> *Matter of Obaighena*, 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). In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with [REDACTED] on March 29, 2008. *Multi-Axial*

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<sup>1</sup> The AAO notes that contrary to counsel's assertion that the couple's son is a U.S. citizen, *Letter from [REDACTED] at 3, supra*, the record shows he was born in Mexico. *Application to Register Permanent Residence or Adjust Status (Form I-485)* (indicating [REDACTED] was born on August 6, 1998, in Mexico).

*Psychological Assessment Report* by [REDACTED] *supra*. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. There is no evidence that there is a history of treatment for anxiety or any mental health condition. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Finally, to the extent the record contains a letter from [REDACTED] doctor indicating [REDACTED] will be undergoing surgery and requiring the assistance of the applicant during recovery, *Letter from* [REDACTED] *supra*, the letter does not address the prognosis or severity of [REDACTED]'s condition, nor does it elaborate or specify how [REDACTED] will require his wife's assistance following surgery. Notably, neither the applicant nor her husband make any mention of his surgery. *Letters from* [REDACTED] *supra*; *Letter from* [REDACTED] *supra*. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility 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)(6)(C) 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.