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

[REDACTED]

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FILE:

Office: CHICAGO

Date:

SEP 21 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willful misrepresentation of a material fact. The applicant 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 to join her United States citizen spouse, [REDACTED].

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse has lived and worked in the United States for over 29 years and has been married to the applicant for more than 39 years. Counsel states that the applicant and her spouse have six children together: three of their children are lawful permanent residents; two of their children in Mexico are in the final process of immigrating to the United States; they had a son who died on November 26, 2003 of cardiac arrest; and their lawful permanent resident daughter was diagnosed with eye cancer. As corroborating evidence, counsel furnished birth, marriage and immigration documents for the applicant's spouse, children and grandchildren. Counsel also furnished an affidavit from the applicant's spouse, real estate records, proof of voter registration, a letter from Saint Mary's Parish, family photographs, a letter from [REDACTED] of the Section of Hematology/Oncology at the University of Illinois Medical Center, copies of money orders, and immigrant petition approval notices for the applicant's children. The entire record was reviewed and considered in rendering the 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 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.

In the present application, the record reflects that on March 15, 1989 the applicant, a citizen of Mexico, applied for admission at the Laredo, Texas port-of-entry claiming to be a United States citizen. The applicant presented a Texas Birth Certificate under the name [REDACTED]. During secondary inspection, the applicant admitted she is a Mexican citizen. She testified that she had purchased the birth certificate in Chicago, Illinois for \$150.00. The applicant was charged with a violation of 8 U.S.C. § 1325 and 18 U.S.C. § 371 for conspiracy to violate the immigration laws by willful concealment of a material fact (U.S. District Court Southern District of Texas, Case Number [REDACTED]). On March 16, 1989, the applicant pled guilty to this offense and was issued a suspended sentence of imprisonment for six months and she was placed on probation for a period of three years. Therefore, the AAO concurs with the director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed her inadmissibility on appeal.

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. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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.

Counsel asserts that the applicant maintains the family home where she lives with her spouse, her son [REDACTED], her daughter [REDACTED] her daughter-in-law, and three grandchildren. Counsel states that the applicant cooks, cleans, shops and cares for the seven family members on a daily basis. Counsel states that the applicant is the primary caretaker for [REDACTED] who in 2000 was diagnosed with an aggressive soft tissue sarcoma of the eye. Counsel states that it would be very difficult for [REDACTED] to reside in the United States without her mother. Counsel states that if [REDACTED] departed the United States, her health would be seriously jeopardized because her cancer cannot be adequately treated in Mexico.

Counsel furnished an affidavit from the applicant's spouse, dated December 21, 2004, which states that in late 2000 [REDACTED] was diagnosed with cancer in her left eye. The applicant's spouse states that between December 2000 and November 2001, [REDACTED] was hospitalized at the University of Illinois at Chicago Medical Center where she underwent surgery, chemotherapy and radiation. He states that the doctors have indicated that [REDACTED] requires an additional operation and have advised that she needs to restrict greatly her activity and avoid exposure to the sun. He states that [REDACTED] is completely dependent on his wife for her care and dependent on him to provide for her financially. He states that the doctors have advised that there are no doctors available in Mexico to provide [REDACTED] with the specialized care for her particular form of cancer.

Although hardship to the applicant's daughter is not relevant in these proceedings, it will be considered insofar as it results in hardship to the qualifying family member, the applicant's spouse. The record contains a letter from [REDACTED] physician, [REDACTED], Clinical Instructor, Section of Hematology/Oncology, University of Illinois Medical Center, dated October 8, 2004. [REDACTED] states in his letter that although [REDACTED] most recent evaluation showed no evidence of reoccurrence, the aggressive cancer places her at substantial risk of both local and distant relapse. He states that the applicant's support for [REDACTED] continues to be a critical component of her treatment. He states that the applicant continues to care for [REDACTED] physical and emotional well-being. He states that the trauma [REDACTED] would experience if her mother were not allowed to remain in the United States is of great concern since studies have shown that the emotional well-being of cancer patients is important to their survival.

The AAO has carefully reviewed the aforementioned documentation and finds that they demonstrate diagnosis and treatment for cancer from December 2000 to November 2001. The documentation reflects the applicant's role as [REDACTED] primary caretaker during this period. However, the documentation does not demonstrate [REDACTED] current condition and the type of care she requires on a daily or periodic basis. Further, the letter from [REDACTED] does not indicate whether [REDACTED] who is 34 years old, has suffered any type of disability as a result of her cancer that would prevent her from finding employment and living an independent lifestyle. Counsel asserts on appeal that [REDACTED] "continues to suffer from the expansive debilitating effects of cancer," but fails to provide any specifics on her disability. The applicant's spouse states

in his affidavit that [REDACTED] will require an additional operation. However, [REDACTED]'s letter fails to mention any additional medical treatment or procedures scheduled for [REDACTED]. According to [REDACTED] letter, [REDACTED] most recent evaluation showed no evidence of reoccurrence. Furthermore, the applicant's spouse's assertion that [REDACTED] would not be able to receive commensurate health care in Mexico is not supported by country condition reports on health care in Mexico and/or a letter from a medical expert such as [REDACTED]. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence. Therefore, the AAO cannot conclude that the applicant's daughter has an on-going medical condition that would result in extreme hardship to the applicant's spouse due to the applicant's inadmissibility.

Counsel asserts that the applicant's spouse is dependent on the applicant because of the critical role she plays in his life and the life of their family. Counsel states that the applicant is responsible for maintaining their home and fulfilling her duties as a wife, a mother, and a grandmother. Counsel states that the applicant supports her spouse emotionally, physically, and is an integral component of the family. Counsel states that the applicant cooks, cleans, and otherwise maintains the family home. Counsel states that if the applicant were forced to leave the United States, her spouse would be forced to choose between abandoning his life in the United States to go with his wife and [REDACTED] to Mexico or remain in the United States with the rest of his family. Counsel states that the applicant's spouse's advanced age of 62 years, 29 years of residence in the United States, and 39 years of marriage to the applicant are all factors which demonstrate that he will suffer extreme hardships. The applicant's spouse reiterates many of these assertions in his affidavit filed on appeal. The applicant's spouse further states that he cannot imagine living without the applicant at this point in his life and having to fulfill all the responsibilities they have to their children and grandchildren. He states that the applicant is the person most responsible for keeping their family together. He states that her presence is essential to his well-being and the well-being of their family.

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 does not rise to the level of extreme hardship based on the record. 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 exists. 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 be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, 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).

Finally, the applicant asserts that he could not go to Mexico with the applicant if she were denied admission to the United States. He states that the reasons include his need to work in the United States to support his family financially, [REDACTED] need for care from at least one parent while she is receiving treatment at UIC Medical Center in Chicago, and the need for their children and grandchildren in the United States to receive love, affection and support.

As previously discussed, the record does not demonstrate [REDACTED] current medical condition, the type of daily or periodic care she requires, and whether she could seek commensurate medical treatment in Mexico. In regard to the applicant’s spouse’s assertion that he needs to work in the United States to support his family, the record demonstrates that his five children are adults, and [REDACTED] and the applicant are the only family members dependent on him. The record also demonstrates that he periodically sends remittances to his daughter in Mexico, [REDACTED]. However, the record does not indicate the total annual sum and frequency of these remittances. Nor does the record indicate whether any of his other adult children could financially provide for [REDACTED] and [REDACTED]. Further, there is nothing in the record to establish that the applicant’s spouse, who is a native of Mexico, would not be able to find employment and establish a home in Mexico. The applicant’s spouse stated in his affidavit that two of his five children currently reside in Mexico, indicating his family ties and support in the country.

The AAO acknowledges that the applicant’s spouse would suffer emotional hardship as a result of his separation from his children and grandchildren who reside in the United States. However, his situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. There is no indication in the record that his children and grandchildren would not be able to visit him in Mexico. The AAO notes that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, 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 eligibility for a waiver of inadmissibility under sections 212(i) of the Act. 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(i) of the Act, the burden of establishing that the application merits approval 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.