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U.S. Citizenship
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Services

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FILE:

Office: CHICAGO

Date:

SEP 29 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

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 District Director, Chicago, Illinois, denied the instant waiver application, which 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 Mexico, the spouse of a U.S. lawful permanent resident (LPR), the mother of two U.S. citizen children, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and children. The district director found that the applicant had failed to establish extreme hardship to her U.S. LPR spouse, and denied the application.

On appeal counsel contended that the evidence submitted demonstrates that denial of the waiver application would cause the applicant's husband to suffer extreme hardship. Although counsel did not contest the district director's determination of inadmissibility, the AAO will review that determination.

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.

The record contains an OF-194, Refusal Worksheet signed by a consul in Mexico City. That worksheet indicates that on June 5, 1995 the applicant, then using the name [REDACTED] applied for a non-immigrant visa, stating that she was unmarried, had never been to the United States before, had no relatives living in the United States, and was going to the United States to participate in an artesanía exhibition.

On July 28, 1995 the applicant appeared at the United States embassy in Mexico City to request a travel letter for her daughter, so that the child could accompany the applicant and her husband to the United States. Under questioning, the applicant admitted that she had been living in the United States illegally since 1991 and was returning to resume her illegal residence in the United States.

The applicant's marriage license and other documents in the record show that the applicant and her husband married on March 30, 1991. The applicant was married when she represented that she was not. The applicant also misrepresented her immigrant intent.

On February 27, 2006, in a sworn interview before an officer of USCIS, the applicant stated that she first entered the United States on May of 1991 by entering illegally, and that she departed the United States during 1995. She stated that she applied for a B-2 visa to reenter the United States during June or July of 1995, but that it was cancelled because she misrepresented information on the visa

application. She stated that she entered the United States illegally again during August of 1995. Finally, the applicant indicated that at her January 25, 2006 adjustment interview she stated that her last entry into the United States was during May 1991 and that she had never applied for a visa.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the Board of Immigration Appeals stated that a misrepresentation is material if the applicant is excludable based upon the true facts, or if the misrepresentation shut off a line of inquiry relevant to the alien's eligibility, which line of inquiry might well have resulted in a proper determination that the alien should be excluded.

A consular officer has discretion in determining whether to issue a nonimmigrant visa. The applicant misrepresented her marital status when she applied for a nonimmigrant visa. Had she revealed that she was married to a U.S. LPR, the officer who issued her a non-immigrant visa would have had greater reason to believe that she had the intent to remain in the United States, which likely would have resulted in further questioning on the subject and possibly the denial of her application for a nonimmigrant visa. That misrepresentation was material, and was made to procure a visa.

Further, in applying for a nonimmigrant visa the applicant represented that she did not intend to remain in the United States as an immigrant. In fact, she was returning to the United States to resume her unlawful residence in Chicago. That misrepresentation was material and was made to procure a visa.

Finally, at her adjustment interview the applicant stated that she had never applied for a visa. If she had revealed the truth, that her visa had been canceled because she was found to have made material misrepresentations in procuring it, the applicant should have been found inadmissible. The applicant's misrepresentation was material and was made to procure a benefit under the Act.

The AAO finds that the applicant has knowingly misrepresented material facts as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

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

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully

resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of 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).

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).

The record contains character references from friends and acquaintances that contain no information relevant to whether denial of the waiver application would cause hardship to the applicant's husband. Those letters are not relevant to any material issue in this matter and will not be further addressed. A letter from another friend states that the applicant and her husband have only hardship and poverty to return to in Mexico.

The principal of the school the applicant's children attend stated that the applicant's children would not be comfortable living in Mexico. Another friend stated, "It would be hard for her family to have to see [the applicant] return to Mexico. Her husband as well as her children will suffer greatly without her." The family's pastor stated, "If she is required to leave the United States, it would be a great personal hardship for [the applicant]. And [the applicant's husband] would suffer greatly if [the applicant] would have to return to Mexico." Those letters provided no more concrete description of the hardship the applicant's husband would face if the applicant returns to Mexico.

Undated letters from the applicant's children state that if the applicant is removed to Mexico it will be difficult for her husband because the applicant will not be available to transport and otherwise care for the children and that the entire family, including the applicant's husband, will miss her so much that they will cry.

In an undated letter, the translation of which is dated May 19, 2006, the applicant's husband stated that if the applicant is removed from the United States it will be difficult for him because currently the applicant helps with the various household bills, whereas if she goes to Mexico, he will be obliged to support her there. He states that he would be unable to manage all of the bills for their household in the United States, and even less able to afford to support a second household in Mexico. He stated that without the applicant his children would not be as well cared for. He further stated that the separation would affect him emotionally, as well.

In her own undated letters the applicant stated that if she is obliged to return to Mexico she will take her children with her and it will be difficult for her husband because he will be obliged to help support them there. She also stated that they would be in a very different school system in Mexico, and would not have the same opportunities that they have in the United States.

The joint 2001, 2002, 2003, 2004, and 2005 Form 1040, U.S. Individual Tax Returns of the applicant and her husband show that the couple declared total income of \$21,472, \$23,054, \$37,347, \$49,138, and \$35,791 during those years, respectively.

The record contains 2003, 2004, and 2005 Form W-2 Wage and Tax Statements that show that the applicant earned \$6,386.75, \$12,648.45, and \$104 during those years, respectively. A pay stub shows that as of November 29, 2005 the applicant had earned a year-to-date total of \$9,876.10. An employment verification letter dated January 12, 2006 states that the applicant started work with the issuing company on May 15, 2003 and continued to be employed on the date of that letter at the rate of \$6.50 per hour. The record contains no evidence that the applicant contributed any other income to the family during any year.

In briefs filed in this matter counsel stated that the applicant and his wife have been married since 1991 and that their marriage is based on love and devotion and observed that if the application is denied, the applicant's husband would be obliged to choose between living in Mexico or living in the United States without his wife.

Counsel stated that the applicant's husband depends on her for moral and financial support and relies on her to care for their two children. Counsel concluded that denial of the waiver application would cause extreme hardship to the applicant's husband and their children.

Counsel stated, "When questioned at the time of the adjustment interview, [the applicant] admitted her misrepresentation." In fact, the applicant did not admit to her misrepresentation at her January 25, 2006 adjustment interview. She admitted her misrepresentation when she was recalled for a follow-up interview and confronted, on February 27, 2006, with her nonimmigrant visa application.

Counsel observed that, if the applicant were removed and the applicant's husband chose to return to Mexico with her, ". . . he would be forced to abandon his family and friends, as well as his church and his work."

Counsel stated that the applicant's husband "has very few ties in Mexico," but was no more specific. Whether the applicant's husband's parents still live there, whether he has siblings there, and whether he has friends, relatives, or former employers in Mexico is not revealed in the record. Further, portions of the record appear to show that he has in-laws in Mexico, as will be discussed below.

Counsel stated that the applicant's husband has gained a good reputation as a laborer with the company that employs him, and that if he returned to Mexico, ". . . he would have to start from the beginning as a laborer in Mexico and he is unfamiliar with it." Counsel's meaning is unclear.

Counsel stated that, if the applicant is removed to Mexico, she ". . . would lose the benefit and comfort of her parents with whom she, the applicant, and their children live." The record does not support counsel's assertion that the applicant's parents live in the United States. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. In fact, on G-325 Biographic Information forms dated September 8, 1987 and January 8, 2005, the applicant stated that her parents live in Olinala, Guerrero, Mexico, where both the applicant and her husband were born. Even if the applicant's parents came from Mexico and have remained in the United States since 2005, the record contains insufficient evidence of their current status in the United States and does not address the possibility that they could and would return to Mexico rather than be separated from their daughter. Counsel did not address that possibility.

Counsel appeared to assert that, if the applicant is removed to Mexico, her family would suffer from the loss of her income in the United States.¹ Counsel stated that if the applicant is removed and her husband remains in the United States, her husband would be obliged to support her in Mexico.

¹ Counsel appears to have confused the applicant and her husband on page 7 of one of the briefs submitted, in that he stated,

Currently, the applicant is the sole economic provider for his wife and children. The applicant is able to provide health insurance for his family. This is a benefit which likely will become unavailable if the applicant is forced to leave and his family stays or if the applicant's family were to follow him to Mexico causing the family to suffer.

Counsel also stated,

Though what the applicant earned in 2005 is not a large sum of money on which to live in the United States, it was sufficient to meet the needs of the applicant's family. If the applicant's waiver applicant is not granted and he is forced to leave the United States, his family will suffer a tremendous economic blow.

Counsel also stated that if the applicant is removed and her husband remains in the United States, he would be obliged to find a job that offers health benefits so that his children would have that coverage. Previously in the same brief, counsel appeared to imply that the applicant's husband already has health coverage.² Again, counsel's meaning is unclear.

Counsel stated that if, in the alternative, the applicant's husband and her children accompany her to Mexico, ". . . their economic state would be unknown for the foreseeable future as [the applicant's husband] does not have ties in Mexico." Again, counsel provided no more concrete explanation of his assertion that the applicant's husband has no ties in Mexico.

The AAO will consider the economic harm the applicant's husband would suffer as a consequence of her removal, to the extent that harm is demonstrated by the evidence in the record.

Counsel stated,

Pursuant to the most recent State Department report on Mexico, the applicant's home country, unemployment is extremely high, there are great challenges in social development including wide disparities in income distribution, low nutrition, inadequate health care, and low secondary education levels. See pages 1-5 of the U.S. Department of State report on Mexico, found at www.state.gov, last visited on 12/22/03.

Counsel stated, "The applicant's children would not have the same educational opportunities, health care, or nutrition in Mexico . . ." He further stated that moving to a country where good medical attention is difficult to obtain "would undoubtedly be frightening" for the applicant's husband and cause him great hardship.

With the brief, counsel provided the U.S. Department of State's 2004 Country Report for Mexico. That report states, "In 2002, the top 10 percent of the Mexican population earned 36 percent of the total income, while the bottom 20 percent earned an estimated 4 percent." That document does not support counsel's statements pertinent to unemployment, nutrition, health care, or low secondary education levels. Counsel provided no other State Department report pertinent to Mexico.

Counsel has stated that if the applicant is removed to Mexico she would likely have to take her children with her, and the applicant's husband would be obliged to support them all there. Counsel

The applicant in this case is a woman, and during most of the years, at least, for which returns were submitted, her husband earned most of their income. The AAO must presume that counsel momentarily confused the applicant's husband in this case with the applicant and misspoke.

² See Footnote 1

has also argued that the burden of raising his children in the United States without the applicant would cause the applicant's husband extreme hardship.

At the time of this writing the applicant's daughter, the older of the two children, is 19 years old. The record contains no reason to believe that she requires a great degree of child care. The record contains no evidence, in fact, that she is unable to be self-supporting.³

The younger child, the applicant's son, is currently 13, which creates a factual presumption that he cannot support himself. The record contains no evidence, however, that he is in need of a great degree of care than is to be normally expected. Although the record contains assertions that raising him without the applicant's aid would cause the applicant's husband extreme hardship, no reason appears in the record why this should be so.

Further, counsel has alleged that the applicant's father and mother live in the same household with the applicant, her husband, and their children. Counsel has not addressed the possibility that if the applicant were removed to Mexico and her children remained in the United States, and thus required care while their father was unable to be with them, the applicant's parents would provide this care.

The record does not demonstrate that, if the applicant is removed to Mexico and her husband and children remain in the United States, the duties of child care that would fall to him would create a hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

As to the economic hardship to the applicant's husband if his wife leaves the United States and he remains, counsel stated,

In the year 2005, [the applicant and her husband] earned approximately \$35,791 together. [The applicant's husband] earned about \$13,000 working for roofing companies. This is not a great deal of money, and certainly not enough to support 2 households, one in the U.S. and one abroad as well as other living expenses, along with travel and communication expenses to visit one's spouse.

The AAO concurs that \$13,000 would be insufficient to meet those needs, and will analyze the evidence to determine whether it demonstrates that the applicant's husband made only that amount during 2005.

The record contains the 2005 joint tax return of the applicant and her husband which, as was noted above, shows that, together, they declared total income of \$35,791. To that point, the evidence supports counsel's argument. Of that \$35,791, \$23,935 was in wages and other earned income, and \$11,856 was in unemployment compensation.

³ No evidence was submitted to show, for instance, that the applicant's daughter is extending her education beyond high school.

Form W-2 Wage and Tax Statements in the record show that during 2005 the applicant earned \$104. Other W-2 forms show that the applicant's husband earned \$8,117.05 working for one roofing company and \$4,870.80 working for another roofing company. Those W-2 forms show a total of \$12,987.85 earned by the applicant's husband and \$104 earned by the applicant's wife, for an overall total of \$13,091.85 earned by both. The record does not demonstrate who earned the remaining \$22,699.15 in wages. The record does not demonstrate to whom the \$11,856 in unemployment compensation was paid.

Counsel's argument rests upon the assumption that all of the unemployment compensation and all of the unattributed wages were paid to the applicant. The record, however, contains no evidence in support of counsel's assumption. As was noted above, counsel's assertions are not evidence and are to be accorded no evidentiary weight. Absent any evidence, the AAO will not assume that the applicant received any compensation during 2005 other than the \$104 that the evidence demonstrates she received.

Counsel stated, "According to World Bank Development Indicators, the Gross National Income *per capita* for 2004 in Mexico was \$6,230 . . . [whereas] [i]n the United States it was \$37,610. The record contains a portion of a list, published by the World Bank and provided by counsel, of *per capita* incomes of various countries during 2004. The portion provided does not include the United States or Mexico. Notwithstanding the lack of hard evidence provided by counsel, the AAO accepts that Mexico is not as wealthy a country as the United States.

The applicant's burden was not, however, merely to demonstrate that the applicant's husband's earning power would likely decline if he moved to Mexico. Pursuant to *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996), that is insufficient. The loss of any income typically engenders some degree of hardship. Counsel was obliged, however, in order to prevail on the issue of economic hardship, to demonstrate that the hardship occasioned to the applicant's husband by the change in economic circumstances, when considered with the other hardship factors in this matter, would rise to the level of extreme hardship.

Counsel has asserted or implied that the applicant's husband would be unlikely to find employment in Mexico, and supported this with the assertion that the applicant's husband has few contacts in Mexico. The abstract assertion that the applicant's husband has few contacts in Mexico, without further explanation, is insufficient. Counsel did not enumerate the contacts that he admits the applicant has in Mexico. The record does not show the location of the applicant's husband's parents and any siblings he has, and some evidence in the record appears to indicate that the applicant's own parents continue to live in Mexico, in the home town of the applicant and her husband. The applicant may have other family and friends there, as may her husband.

The applicant's husband has been practicing a trade for many years now. An employment verification letter in the record indicates that he is now a journeyman roofer. The mere assertion that he would be unable to find employment in Mexico, absent supporting evidence, or even argument, is insufficient. The evidence in the record is insufficient to show that, if the applicant is removed to Mexico and her husband joins her there, it would occasion economic hardship to him which, when

considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Counsel did not provide a list of the applicant's husband's recurring household expenses, or appropriate supporting evidence, to show that he is unable to live without the applicant's income, or unable, after expenses, to contribute to her support in Mexico. The record does not demonstrate that if the applicant's husband remained in the United States he would be unable to earn an amount sufficient to support himself and his children, and the record does not show either that the applicant would be unable to support herself or that her husband would be unable to contribute to her support. The record does not show that, if the applicant were removed to Mexico and her husband remained in the United States, with or without their children, that arrangement would occasion economic hardship to him which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

The only other hardship factor counsel asserted is the emotional harm that would be occasioned to the applicant's husband if he either joined the applicant in Mexico or remained without her in the United States, either with or without their children. In this regard, counsel stated, and provided testimonial evidence to support, that the applicant and her husband love each other and would be saddened to be separated. There is no professional testimony to demonstrate that this sadness would cause hardship to any greater degree than in a typical case in which a husband and wife are separated by deportation.

Further, the record contains assertions that the applicant's children would have limited educational opportunities in Mexico. The record contains scant evidence, however, pertinent to educational opportunities in Mexico. Further, they have been educated, thus far, in the United States, and are permitted to return to the United States whenever their parents permit it. The evidence is insufficient to show that if the applicant's children move to Mexico their educational opportunities would be significantly curtailed, thereby causing the applicant's husband hardship.

The evidence in the record is insufficient to show that, if the applicant is removed to Mexico and her husband remains in the United States, he would suffer emotional hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests 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 record demonstrates that the applicant has loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Separation from one’s spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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 (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); *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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her LPR husband as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.