

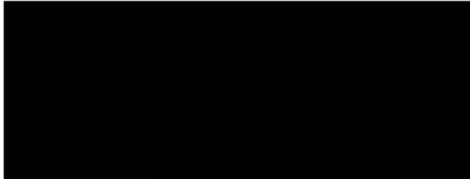
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

FILE:



Office: PHOENIX, ARIZONA

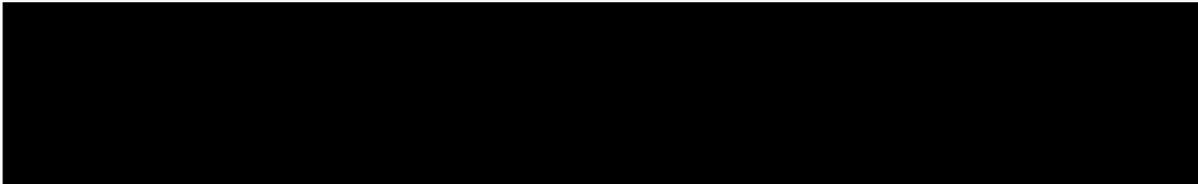
Date: APR 21 2010

IN RE:



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

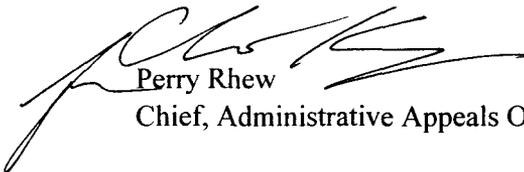
ON BEHALF OF APPLICANT:



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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Phoenix, Arizona. 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 Mexico who was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The applicant is married to a U.S. citizen 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 his wife, daughter, and parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated September 28, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on May 18, 1993; copies of [REDACTED] and the couple's daughter's birth certificates; copies of the applicant's parents' permanent resident cards; a letter from [REDACTED]; a letter from the applicant's parents; numerous letters of support, including from the couple's daughter; a letter from [REDACTED] employer; copies of tax documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

In this case, the record shows, and the applicant admits, that he attempted to enter the United States on June 3, 1991, using a fraudulent amnesty card. *Record of Sworn Statement*, dated June 3, 1991 (stating he bought the card for approximately \$200). The applicant was excluded and deported on July 24, 1991. The applicant admits he entered the United States without inspection in 1992. *Application for Waiver of Grounds of Inadmissibility (Form I-601)*, dated September 7, 2007.

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

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, in pertinent part:

(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 the applicant attempted to enter the United States in June 1991 using a fraudulent document. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A waiver of inadmissibility under section 212(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) of the Act, 8 U.S.C. § 1182(i). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. See *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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, the applicant's wife, [REDACTED], states that she has tried to legalize her husband's immigration status since 1994, costing her family both emotionally and financially. [REDACTED] states that her husband is withdrawn, depressed, and hesitant to go anywhere because he fears he may be deported to Mexico at any moment. She states that if her husband departed the United States, it would cause chaos to her family. [REDACTED] contends that she has experienced severe anxiety, stress, fear, and disillusionment to the extent that she has begun to lose her hair from anxiety. In addition, according to [REDACTED], the couple's daughter has experienced high levels of anxiety and stress due to the applicant's immigration case. *Letter from [REDACTED]*, undated; see also *Letter from [REDACTED]*, dated June 21, 2007 (letter from the applicant's daughter stating she has experienced severe anxiety, stress, anger, and fear over her father's immigration status).

A letter from the applicant's parents, both of whom are lawful permanent residents, states that the applicant helps to support them. The applicant's parents contend that their if son were sent back to Mexico, "it would be impossible for [them] to be able to have a normal life. He is the main reason

[they] are able to go through life without money problems.” According to the applicant’s parents, they have no family left in Mexico and the applicant “wouldn’t have shelter or anything” if he returned to Mexico. *Letter from* [REDACTED] *and* [REDACTED], dated June 21, 2007.

After a careful review of the evidence, it is not evident from the record that the applicant’s wife has suffered or will suffer extreme hardship as a result of the applicant’s waiver being denied.

The AAO recognizes that [REDACTED] and the applicants’ parents will endure hardship upon the applicant’s departure from the United States and is sympathetic to the family’s circumstances. However, although counsel contends it would be an extreme hardship for [REDACTED] to move to Mexico to be with her husband, *Applicant’s Brief on Appeal, supra*, at 5-6, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). [REDACTED] herself does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. *Letter from* [REDACTED] *supra*. Similarly, the applicant’s parents do not discuss the possibility of moving back to Mexico, where they were born, to avoid the hardship of separation, and they do not address whether such a move would represent a hardship to them.

If [REDACTED] and the applicant’s parents decide to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), 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. *See also 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).

Regarding [REDACTED] contention that she has begun to lose her hair due to the severe anxiety and depression caused by her husband’s immigration case and her daughter’s anxiety problems, *Letter from* [REDACTED] *supra*, there is no evidence in the record, such as a letter in plain language from any health care professional, to substantiate this claim. The record does not show that [REDACTED] has sought any mental health services and there is no allegation that the applicant’s situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *See Perez v. INS, supra*. Moreover, according to [REDACTED], her anxiety and depression are related to her husband’s immigration case; however, she does not comment on whether her symptoms might lessen if she relocated to Mexico with her husband, and the applicant does not discuss the availability of mental health care in Mexico.

With respect to the applicant's parents' financial hardship claim, although the applicant has submitted a copy of his 2006 tax return, there is no evidence addressing his parents' regular monthly expenses, such as rent or mortgage, and there is no evidence addressing to what extent he helped financially support his parents. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

To the extent counsel suggests [REDACTED] would also suffer extreme financial hardship because the applicant earns most of the family's income and a job in Mexico would not allow the applicant to provide for his spouse and their five children, *Applicant's Brief on Appeal, supra*, at 5-6, the record does not show that the applicant has five children. In addition, the record shows that [REDACTED] filed an affidavit of support to sponsor her husband based on her income of \$28,600. *Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated April 30, 2007; see also *Letter from [REDACTED]* dated March 22, 2007 (stating [REDACTED] has been an employee at [REDACTED] since September 1988 and earns \$13.75 per hour). Furthermore, there is no evidence addressing [REDACTED] regular monthly expenses, such as rent, mortgage, or child care expenses. As such, there is insufficient evidence in the record to show that [REDACTED] would suffer extreme financial hardship if her husband's waiver application were denied.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.