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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

[redacted]

FILE: [redacted] Office: SANTA ANA, CA Date: APR 30 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot. The case will be returned to the Field Office Director for further processing.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States 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 in the United States with her spouse and children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director,* dated July 10, 2007.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding the applicant inadmissible. In the alternative, counsel asserts that the applicant's spouse would suffer extreme hardship as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office; Attorney's brief.*

In support of the waiver, counsel submits several briefs. The record also includes, but is not limited to, letters from the employer of the applicant; medical records for the applicant's spouse; a statement from the applicant's spouse; a statement from the applicant; statements from the applicant's children and stepchildren; academic transcripts for the applicant's children; health insurance cards and coverage statement; welding qualification records for the applicant's spouse; car titles; an apartment lease; tax returns for the applicant and her spouse; W-2 forms for the applicant's spouse; a social security statement for the applicant's spouse; employment letters for the applicant's spouse; and earnings statements for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

> (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 that:

> (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.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. On February 25, 2006, the applicant married a naturalized United States citizen. *Marriage certificate.* On December 20, 2006 the applicant was admitted to the United States at the Otay Mesa port of entry on a B-1/B-2 Visa/Border Crossing Card. *Form I-94, Departure Card*; *USCIS Memorandum*, dated October 11, 2007. On January 18, 2007 the applicant and her spouse filed a Form I-130, Petition for Alien Relative, and Form I-485, Application to Register Permanent Residence or Adjust Status. *Forms I-130 and I-485.* During her adjustment of status interview on March 19, 2007, the applicant stated that she and her children had first come to the United States on December 20, 2006. *USCIS Memorandum*, dated October 11, 2007. The applicant's children stated they had been in school in the United States since 2004. *Id.* Counsel asserts that the applicant did not intend to remain in the United States at the time of her December 20, 2006 admission and, therefore, should not be found inadmissible to the United States under section 212(a)(6)(C) of the Act.

Counsel contends that the applicant decided to remain in the United States only after being informed of the abnormal results of her spouse's blood tests. *Attorney's brief*, dated September 7, 2007. In support of this assertion, the record includes medical documentation of blood tests performed on the applicant's spouse. *Medical records for the applicant's spouse,* dated November 11, 2006. The AAO observes that the medial records for the applicant's spouse are from a clinic located in Mexico and are in the Spanish language. *Id.* While the medical records are accompanied by certified English translations, these translations fail to translate the records in their entirety and there is nothing in the translations indicating abnormal blood results. Accordingly, the AAO does not find the record to support counsel's assertion that the applicant's decision to remain in the United States was based on the submitted blood test results. Additionally, the AAO notes that the submitted medical records are dated November 11, 2006, prior to the applicant's December 20, 2006 admission to the United States.

With regard to immigrant intent at the time of admission, the AAO notes that the Department of State (DOS) has developed the 30/60-day rule that applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...taking up permanent residence." *DOS Foreign Affairs Manual*, § 40.63 N4.7-1(3) and (4). Under this rule, when violative conduct occurs within 30 days of entry into the United States, a consular office may presume that the applicant misrepresented his or her intention in seeking a visa or entry. *Id.* at § 40.63 N4.7-2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its reasoning to be persuasive in this matter.

The applicant and her spouse filed the Forms I-130 and I-485 less than one month after her nonimmigrant admission to the United States and the record does not establish, as counsel contends, that these filings were based on the results of the applicant's spouse's abnormal blood test results. Accordingly, the AAO finds the applicant to have used her B-1/B-2 Visa/Border Crossing Card to

enter the United States when she was an intending immigrant and, therefore, to be inadmissible under section 212(a)(6)(C) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant or her children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse relocates to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization Certificate.* His parents reside in Mexico. *Form G-325A, Biographic Information, for the applicant's spouse.* The applicant's spouse has lived in the United States since 1985. *Attorney's brief,* dated June 7, 2007. He has three children from a previous relationship, ages 18, 21 and 27. *Birth certificates*; *Lawful Permanent Resident card.* While the AAO acknowledges that applicant's spouse would be separated from his children if he were to reside in Mexico, it notes that they are legally adults and the record fails to indicate that he continues to be legally responsible for their care or support.

Counsel states that the applicant's spouse has been informed that he is in the beginning stages of diabetes. *Attorney's brief,* dated November 26, 2007. Although the record includes medical documentation from a clinic in Mexico concerning the applicant's spouse's blood levels, this documentation, as previously discussed, does not establish that the applicant's spouse has diabetes or any other medical problem. *Medical records for the applicant's spouse*, dated November 11, 2006. Even were this documentation to demonstrate that the applicant's spouse's has diabetes, the record fails to provide evidence, such as published country conditions reports, that the treatment required by

the applicant's spouse would be inadequate or unavailable in Mexico. The record does not address employment opportunities in Mexico for the applicant's spouse, who is a welder. *Form G-325A, Biographic Information, for the applicant's spouse.* Neither does it document, through published country conditions reports, the economic situation in Mexico or the cost of living there. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Mexico. *Naturalization certificate.* His three children live in the United States. *Attorney's brief,* dated June 7, 2007; *Birth certificates; Lawful Permanent Resident card.* Counsel asserts that if the applicant's spouse is separated from the applicant, he will have to support two households, pay rent in the United States and Mexico, and pay out of pocket for any medical emergencies that his family might encounter. *Attorney's brief,* dated June 7, 2007. The record includes an apartment lease for the applicant's spouse. *Apartment lease.* While the AAO acknowledges this documented expense, it notes the record does not include other evidence of the applicant's spouse's expenses and financial obligations and, therefore, fails to establish how his financial situation would be affected by the applicant's removal. Furthermore, there is nothing in the record that demonstrates that the applicant would be unable to support herself in Mexico. The AAO notes that the record indicates that the applicant is the owner of a beauty salon in Mexico that is currently run by her sister and, further, that she was employed up until the time of her December 20, 2006 admission to the United States by the Municipality of Mazatlan, Sinaloa. *Attorney's brief,* dated September 13, 2007; *Letter from the Director of Human Resources, Municipality of Mazatlan,* dated September 20, 2007.

Although the AAO notes counsel's claim that the applicant's spouse would have to pay out of pocket for any medical emergencies that the applicant and her children might encounter in Mexico, it does not find the record to establish that the applicant or her children currently have any health problems or that the applicant would be unable to cover her and her daughters' health care costs upon their return. Counsel also asserts that the applicant's spouse's previous failed relationship as a result of his ex-wife's infidelity should be considered as it affects his attachment to the applicant and his emotional stability, particularly if he and the applicant are separated. *Attorney's brief,* dated November 26, 2007. The record, however, does not include documentary evidence, e.g., an evaluation by a licensed mental health practitioner, of how being separated from the applicant would affect the applicant's spouse on a psychological level. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

The AAO acknowledges the difficulties that will be faced by the applicant's spouse if the applicant is found to be inadmissible to the United States. However, U.S. court decisions have repeatedly 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, *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. In addition, *Perez v. INS,* 96 F.3d 390 (9th 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. *Hassan v. INS, supra,* held further 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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 under section 212(a)(9)(B) 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.