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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:



Office: MIAMI (TAMPA)

Date: **MAR 22 2010**

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: SELF-REPRESENTED

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 District Director, Miami, Florida, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

An attorney has made various submissions in this matter. That attorney, however, did not file a Form G-28, Notice of Entry of Appearance in this matter. The record contains no indication that the applicant has agreed to be represented by counsel. All representations will be considered, but the decision will be furnished only to the applicant.

The record reflects that the applicant is a native and citizen of Mexico. In a decision dated July 17, 2007 the district director found that, in attempting to be admitted to the United States, the applicant presented another person's Border Crossing Card to an immigration inspector and represented herself to be that other person. The district director found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore 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).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with her husband and children. The district director also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. Additional evidence and a brief were submitted on appeal.

The record contains, among other documents, a sworn statement dated September 17, 1992 from the applicant, a copy of a Border Crossing Card, letters from the applicant, a letter from the applicant's husband, letters from some of the applicant's children, an employment verification letter, tax returns, marriage and birth certificates, medical documents, and a letter from an elementary school principal.

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.

Evidence in the record shows that, on September 17, 1992, the applicant presented herself and a Border Crossing Card issued to [REDACTED] to an immigration inspector at Hidalgo, Texas, and, in an attempt to be admitted to the United States, misrepresented that she was [REDACTED]. The applicant has not disputed her inadmissibility on appeal. The AAO therefore affirms the district director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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).

*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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not

predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *see also 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to the applicant’s husband must be established in the event that he accompanies the applicant to Mexico and 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.

The letters and other evidence in the record show that the applicant and her husband have five children, the youngest of whom has Down’s syndrome and associated heart problems, eye problems, and ear problems. The evidence indicates that the applicant cares for the children and that if she were not in the United States, and the applicant’s husband and children remained in the United States, the applicant’s husband and his older daughter would be obliged to take care of the children without her.

In her letter, the applicant stated that because she is 45 years old finding work in Mexico will be difficult. She also stated that she would return to her deceased mother’s house in Matehuala, in San Luis Potosi, Mexico, but that she did not think that her sisters, who live there, will be able to accommodate her. She did not state why her sisters would be unable to allow her to live in her late mother’s house.

The applicant’s husband stated that he would be obliged to support his wife in Mexico and that missing his wife would cause him to fall into a profound depression. He provided no evidence to corroborate that he would be likely to develop clinical depression.

The applicant’s elder daughter stated that she has been suffering shortness of breath and chest pains for about a year and that she believes they are caused by stress related to her mother’s immigration status. She provided no evidence that she has sought medical attention for her asserted condition, and

no evidence, therefore, that a medical professional has concurred that her condition is caused by stress. Further, as was noted above, hardship to the applicant's daughter is not directly relevant to any issue material to this case.

The appeal brief reiterates many of the assertions of the applicant and her family members and argues that the evidence demonstrates that failure to approve the waiver application will cause extreme hardship to the applicant's husband.

The AAO will first address the scenario of the applicant returning to Mexico and applicant's husband and children remaining in the United States.

Although the applicant has asserted that finding employment in Mexico will be difficult, she did not assert that she will be unable to find employment. Further, the record does not demonstrate that the applicant has ever been employed in the United States. As such, her departure to Mexico may not adversely affect her family's income, and whether she is able to support herself may not be a critical issue, if her husband is able to continue to support her without hardship.

The record does not contain any evidence pertinent to the applicant's anticipated living expenses in Mexico, whether or not she is able to find employment. Although the applicant asserted that she did not believe that her sisters will be able to accommodate her in their mother's house, she gave no basis for that belief. Given this lack of evidence, the AAO cannot find that the applicant's husband will suffer financial hardship as a result of her removal to Mexico if he remains in the United States.

The applicant's youngest child has Down's syndrome and concomitant physical problems. The oldest child asserted that she is manifesting physical symptoms due to stress and, in any event, she is very young to assume the responsibilities of full-time care of four siblings including one with Down's syndrome. Further, the applicant's husband's work schedule varies. Sometimes the applicant's husband works from 3 pm to 11 pm, and sometimes he works from 11 pm to 7 am. The AAO finds that to separate the applicant from her children would cause her husband extreme hardship, as he would experience hardship caring for the children without his wife's presence. The remaining scenarios to address are those in which the applicant returns to Mexico with her children, and her husband either joins them or lives in the United States.

The applicant and her husband have asserted that employment is difficult to obtain in Mexico and that medical care is both difficult to obtain and expensive. The applicant's husband has alleged that if he is separated from his family he will suffer profound depression. However, the applicant and her husband provided no corroborating evidence on any of those points.

Although the statements by the applicant and her family members are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

Notwithstanding that the applicant's youngest child has Down's syndrome and related medical problems, and the oldest child states that she has physical manifestations of stress, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that if the applicant returns to Mexico with her children, and the applicant's husband remains in the United States, the applicant's husband will experience extreme hardship.

Further, the evidence in the record is insufficient to show that the applicant's husband is unable to join his family in Mexico without experiencing extreme hardship. The record does not show that the applicant's husband would be unable to find suitable employment in Mexico. Further, the applicant's husband might be able to live in Mexico and to work in the United States. The record does not demonstrate that he would suffer extreme hardship pursuant to either scenario.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under section 212(i)(1) of the Act. Because the AAO has 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)(i) of the Act, the burden of proving eligibility rests 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.