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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

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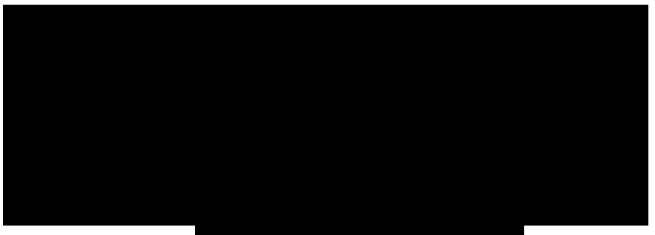

H6

FILE: [redacted] Office: CIUDAD JUAREZ Date: FEB 16 2010

CDJ 2005 527 598

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico. 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 thirty-seven year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having used a fraudulent permanent resident card to obtain employment. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to return to the United States and reside with her husband and children.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge* dated January 17, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband is experiencing extreme hardship as a result of separation from the applicant and would suffer extreme hardship if he relocated to Mexico with the applicant. *See Counsel's Brief in Support of Appeal.* Specifically, counsel states that the applicant's husband has eight U.S. citizen children from a prior marriage who visit him every other weekend and for whom he pays child support and provides medical insurance. Counsel asserts that the applicant's husband would suffer emotional hardship from being separated from his children and his other relatives in the United States and would be unable to continue to provide them with financial support and health insurance if he relocated to Mexico. *Brief* at 1-2. Counsel further claims that the applicant's husband would have difficulty finding employment in Mexico due to his age and economic conditions there and would lose his health insurance, resulting in a worsening of his diabetic condition. *Brief* at 2. Counsel additionally asserts that the applicant's husband is experiencing extreme hardship as a result of the applicant's departure because his two daughters with the applicant and the applicant's two other children reside with him, and he is under additional stress because he suffers from diabetes and finds it difficult to work long hours and raise the children on his own. *Brief* at 2. In support of the appeal, counsel submitted copies of family photographs, health insurance cards for the applicant's husband and family members, copies of birth certificates for the applicant's children born in the United States and permanent resident cards for her two older children, and a copy of a pay stub for the applicant's husband. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –

(II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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.

The record indicates that the applicant obtained a fraudulent permanent resident card and used it for employment purposes. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). There is no indication on the record that the applicant made any misrepresentation to a government official to obtain the permanent resident card or that she used the card to obtain any other document or benefit provided under the Act.

Based on the record, the AAO finds that the applicant, in obtaining a fraudulent permanent resident card and presenting it to her employer, did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. She is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act, but must still seek a waiver under section 212(a)(9)(B)(v) of the Act for unlawful presence in the United States for over one year.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to

the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-seven year-old native and citizen of Mexico who resided in the United States from January 1995, when she entered without inspection, to February 2006, when she returned to Mexico. The record further reflects that the applicant's husband is a fifty-five year-old native of Mexico and citizen of the United States whom she married on August 29, 2002. The applicant resides in Mexico and her husband resides in Ferris, Texas with their children.

Counsel asserts that the applicant's husband would suffer extreme hardship if he were to relocate to Mexico because he has ten children in the United States, including eight from a prior marriage whom he supports and sees every other weekend. Counsel further asserts that the applicant's husband would have difficulty finding employment in Mexico due to his age and would not have access to adequate medical care, which would cause his medical condition to worsen. No evidence

concerning conditions in Mexico was submitted to support these assertions, but the record does contain copies of family photographs as well as birth certificates and other documentation concerning the applicant's husband's children in the United States. This evidence establishes that the applicant's husband has several children in the United States and he is paying child support for those that are still under the age of eighteen. The applicant's husband has been a permanent resident of the United States since 1990, and in light of his length of residence in the United States and his extensive family ties, including several children for whom he is providing financial support and health insurance, the applicant's husband would suffer extreme hardship if he were to relocate to Mexico.

Counsel asserts that the applicant's husband is suffering emotional and physical hardship due to separation from the applicant and having to take care of their four children on his own. In a declaration submitted with the waiver application, the applicant's husband states that the applicant is the best thing that has ever happened in his life and he believes it would be difficult for him to remember to take his medications for diabetes, hypertension, and tuberculosis and follow his strict diet without the applicant's assistance. *Affidavit of* [redacted] dated February 2, 2006. In support of this assertion, counsel submitted birth certificates and photographs of the applicant's husband's children and documentation indicating that he is employed and paying child support. A letter from the applicant's husband's doctor submitted with the waiver application further states that he is being treated for diabetes, hypertension, and tuberculosis and must continue treatment and follow a special diet for his diabetes. *Letter from* [redacted], dated January 31, 2006.

Although a serious medical condition of a qualifying relative is a relevant factor in assessing a claim of extreme hardship, the evidence in the present case does not establish that the applicant's husband is suffering from such a condition. The letter from the applicant's husband's physician states that he his taking medications for various conditions and must continue with his treatment and diet, but no further detail was provided concerning the severity of his condition and the treatment he is receiving. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, no evidence was submitted to support counsel's assertions that applicant's husband's is having difficulty raising the children on his own and that two of them are faltering in their studies without the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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).

The evidence on the record is insufficient to establish that the applicant's husband would experience hardship beyond the type of hardship that a family member would normally suffer as a result of deportation or exclusion if he remains in the United States without the applicant. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.