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U.S. Citizenship  
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NOV 23 2004

FILE: [Redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [Redacted]

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:

[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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles. 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. 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 record reflects that the applicant is the spouse of a U.S. citizen and parent of a U.S. citizen son. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and child.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship to his U.S. citizen spouse and that the district director failed to carefully consider all of the evidence under the appropriate standard. In support of the appeal, counsel submits a brief. The AAO notes that, although counsel indicated that additional evidence would be submitted, as of this date, the record does not contain additional materials. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent presentation of a border crossing card to procure admission to the United States on August 7, 2000. *Record of Deportable/Inadmissible Alien* (Form I-213) (August 7, 2000). The district director's determination of inadmissibility is not contested by the applicant. Section 212(i) provides, in pertinent part:

(i) (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 . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

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 list of non-exclusive 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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). *See also* [REDACTED] *v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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* [REDACTED] 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant’s wife (Ms. Velazquez), age 23, was born in the United States to parents of Mexican descent. *State of California Certificate of Live Birth* (issued July 26, 1982). She and the applicant live with her mother and father, who are lawful permanent residents. *See Declaration of* [REDACTED] [REDACTED] (April 22, 2003). She and the applicant married on April 23, 2001. *License and Certificate of Confidential Marriage* (accepted April 24, 2001). She gave birth to the couple’s U.S. citizen son on January 26, 2002. *State of California Certificate of Live Birth* (issued March 12, 2002). Counsel emphasizes that [REDACTED] [REDACTED] married the applicant at the young age of 19, thereby increasing the emotional hardship she would face if they were separated.

[REDACTED] has never lived in Mexico. *See Declaration of* [REDACTED] [REDACTED]. The applicant’s parents live in Mexico. *Id.* There is mention in the record of the presence of the applicant’s grandfather in the United States, but the record does not reflect the location of his residence or immigration status. *Id.* She

fears for the adequacy of medical care in Mexico, and fears separating from her parents, as she has always lived with them. The record is silent as to whether the applicant's son suffers from any particular medical condition. The record contains no evidence addressing country conditions in Mexico and the projected impact on the applicant's spouse.

Counsel indicates that [REDACTED] is financially dependent on her husband, because she attends school and stays home to raise their child, while the applicant works full time. *Brief In Support of Appeal*, at 7 (November 24, 2003). Counsel asserts that refusal to admit the applicant would result in [REDACTED] inability to further her education, and add to the overall hardship caused by loss of educational opportunities and the economic and other advantages of an education. In other correspondence, counsel states that it is Ms. [REDACTED]'s mother who cares for the couple's child while [REDACTED] and the applicant work. *Letter of [REDACTED]* (June 5, 2003). The same is stated by [REDACTED] in her April 2003 declaration. There is no evidence on the record of her enrollment or attendance in school. Her school attendance is therefore not accorded weight in the hardship determination. The sole evidence of the couple's finances is that which was submitted in connection with the *Affidavit of Support* (Form I-864). These documents, for the 2001 tax year, show that the applicant supplies approximately 67% of the couple's household income. The finances of [REDACTED] parents are not in the record.

Counsel also states that [REDACTED] has decided not to relocate to Mexico with the couple's child in order to avoid separation. The AAO must nevertheless consider the hardship she would face if she relocated to Mexico. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." See *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). As stated above, the record does not contain evidence of country conditions in Mexico. Relocation to Mexico would cause [REDACTED] to separate from her parents, with whom she has lived her entire life, and to adjust to a country in which she has never lived. The record is silent as to whether [REDACTED] speaks Spanish, whether her child is being taught Spanish, or whether she has ever visited the country where her parents were born.

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, contains insufficient evidence to support a finding that [REDACTED] faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 [REDACTED] 996); *Matter of [REDACTED]* (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 [REDACTED]* 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 [REDACTED]* 19 I&N Dec. 245, 246 [REDACTED] Further, demonstrated financial difficulties alone are generally insufficient to

establish extreme hardship. See *INS v. [REDACTED]*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. The record in this case does not demonstrate extreme hardship if the applicant's spouse relocated to Mexico to avoid separation from her husband. Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. See *[REDACTED] v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") The record also does not contain evidence that the applicant's spouse would face a particular or uncommon hardship if she were separated from her parents. The applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. Refusal of a spouse to relocate, without a finding of extreme hardship if the spouse relocated with the applicant, is a matter of choice and does not, without more, create a hardship rising to the level of extreme. See *Matter of Mansour, supra*. In this case, the record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relative rises beyond common difficulties of separation or relocation to the level of extreme. See *Ramirez-Durazo, supra*.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

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.