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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES DISTRICT OFFICE

Date: JAN 28 2005

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.

A handwritten signature in black ink, appearing to read "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 sustained.

The record reflects that the applicant is a 31-year-old native and citizen of Mexico who 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 mother of four U.S. citizen children. She seeks a waiver of inadmissibility in order to remain in the United States with her family and adjust status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on her behalf by her U.S. citizen husband.

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

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if she were refused admission to the United States, and submits additional documentation. 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 January, 1996 fraudulent attempt to enter the United States as a U.S. citizen, for which she was ordered excluded and deported on February 15, 1996. *Decision of the District Director* (October 7, 2003) at 2. The applicant does not contest the district director's determination of inadmissibility. The question on appeal is whether the applicant qualifies for a waiver. 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 *Cerrillo-Perez 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 Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant’s spouse [REDACTED] is a 36-year-old naturalized U.S. citizen of Mexican origin. He has lived in the United States since he was 13 years old (1981), and became a U.S. citizen in 1998. His mother lives in Los Angeles and is a lawful permanent resident. His father and brothers also live in the United States. He has no remaining immediate relatives in Mexico. He and the applicant married in 1991 and have four U.S. citizen children, aged 6-12. The applicant’s mother is deceased and her father is living in Mexico in poor health. All her siblings live in the United States.

[REDACTED] has been working as a mechanic for 15 years. The applicant does not work outside the home and claims no marketable job skills. She graduated from a U.S. high school in 1992. [REDACTED] concerned that if he relocated to Mexico to avoid separation from his wife, he would lose the medical insurance he obtains through his employer, and would find it difficult to obtain sufficient employment to support the family. Financial documentation submitted in connection with the *Affidavit of Support* (Form I-864) indicates that Mr. Contreras supplies 100% of the family income, which at that time was about 78% of the Department of Health and Human Services Poverty Guidelines for a family of five; the household is now a family of six. All four of the couple’s children have significant speech and/or learning impairments being

██████████ treated by their local school district's Office of Special Education and intervention programs. See Applicant's Exh. K-O, *inclusive* (including, *inter alia*, Garden Grove Universal School District Office of Special Education reports). ██████████ is deeply concerned that his children would not receive the intense intervention and therapy that they receive in the United States as students in the public schools. He is concerned that such services would have to be purchased in Mexico, and an expense he would be unable to afford. Counsel indicates that country conditions in Mexico are "very depressing and opportunity for jobs, minimal health care and basic education are limited." *Applicant's Brief in Support of Appeal*, at 4. There is no documentation of country conditions on the record.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (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."); *Shoostary 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."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The hardship presented in this case is in large part economic. The applicant and her husband are responsible for the care of four children. As relatively uneducated individuals, and, in the applicant's case, unskilled, the couple's prospects for adequate employment in Mexico are somewhat dim. If he remained in the United States, ██████████ would face trying to subsist alone in a household with four young children with significant disabilities on below-poverty wages without the household assistance and child care the applicant currently provides. It would be extremely difficult for him to mitigate the effects of separation by visiting the applicant, due to the cost in relation to his income and family size. In Mexico, the significant health conditions of the couple's children would most likely suffer, and it is probable that ██████████ and the applicant would be unable to adequately provide for their care. Although ██████████ is skilled as a mechanic, even these skills bring wages below the poverty line for his family size in the United States. In

Mexico, where wages are generally lower, he and his family could be reduced to abject poverty, compounded by their large family size and the children's disabilities. The hardship [REDACTED] would face is substantially greater than that which was found insufficient in *Ramirez-Durazo, supra*. The hardship in that case, which involved suspension of deportation under former INA § 244, 8 U.S.C. § 1254, rather than a waiver of inadmissibility, involved a family of five, only one of whom, the youngest child, was a U.S. citizen. The Ninth Circuit noted in that case that the BIA had properly significantly discounted the hardship that family would face if removed, due to their illegal presence in the United States, their accumulation of equities in the United States as a result of and during their illegal presence, and the relative ease of transition back into their home country, where they had an abundance of family ties. [REDACTED] has no family ties remaining in Mexico. The applicant's father is in Mexico, but apparently in poor health. [REDACTED] has significant family ties in the United States, including his four U.S. citizen children, his mother and father, and his brothers. Although it is not clear whether [REDACTED] father and brother and the siblings of the applicant are U.S. citizens or lawful permanent residents, it does appear they live in the United States and are not available in Mexico to potentially assist [REDACTED] to adjust to life in a country he has not lived in since the age of 13 and to help reduce the substantial burden of caring for four disabled children, unlike the applicants in *Ramirez-Durazo, supra*. Also unlike the situation in *Ramirez-Durazo*, the family in the instant case includes five U.S. citizens with equities established years prior to the applicant's 1996 deportation and 2003 notification that she required a waiver of inadmissibility and denial of such waiver. *License and Certificate of Marriage* (July 22, 1991); *Certified Abstract of Birth for Mario Contreras, Jr.* (October 5, 1993); *Certified Abstract of Birth for Lesly Contreras* (March 13, 1992); *Certified Abstract of Birth for Ashley Contreras* (November 20, 1994). See *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980); *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) (after-acquired equities are entitled to less discretionary weight). A discounting of the hardship [REDACTED] would face in either the United States or Mexico if his wife were refused admission is therefore not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the fraud for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's husband if she were refused admission, her otherwise clean background, and the significant disabilities of the applicant's children.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.