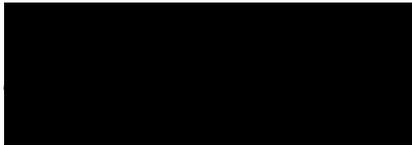


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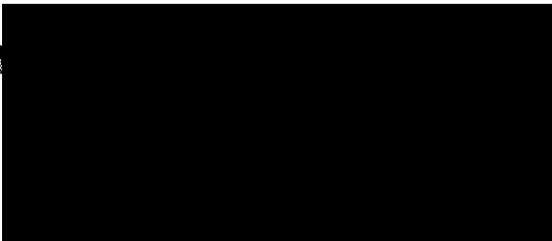
Date: **AUG 08 2006**

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for procuring admission to the United States by fraud or willful misrepresentation. She 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 husband [REDACTED] their daughter, both of whom are U.S. citizens.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her husband, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated September 25, 2003.

On appeal, counsel for the applicant asserts that [REDACTED] has shown that he will suffer extreme hardship, psychologically, emotionally and financially, if the applicant is not permitted to reside with him and their daughter in the United States. *Form I-290B*, dated October 23, 2003; *Brief in Support of Appeal*, received by the Chicago District Office on November 17, 2003.

Attachments to the above referenced Brief in Support of Appeal include, but are not limited to: (1) proof of status as lawful residents or U.S. citizens for ten of [REDACTED] immediate family members and other relatives (*Brief in Support of Appeal, supra*, Exhibits D, E, H-M, T); (2) [REDACTED] statement explaining the reasons he would not be able to join his wife in Mexico if she were forced to leave the United States and the psychological and financial hardship he and his family would suffer in her absence (*Id.*, Exhibit B); (3) affidavits from [REDACTED] relatives and the couple's pastor attesting to the strength of Mr. and [REDACTED] marriage, their mutual dependency and loving relationship, the pain that the break-up of the family would cause [REDACTED] and how [REDACTED] "right hand" and cares for their child while he works (*Id.*, Exhibits F, O-Q); (4) U.S. Department of State *Country Reports on Human Rights Practices – 2002*, chapter on Mexico (*Id.*, Exhibit R); and (5) proofs of employment, salary, and home ownership (*Id.*, Exhibits G,N). The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant used a false identification document for entry into the United States in 1995. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. Counsel does not contest this finding.

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.

Section 212(i) of the Act provides:

- (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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 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 applicant 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. In examining whether extreme hardship has been established, 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).

Hardship the applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Thus, hardship suffered by the applicant or the couple’s child will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant’s U.S. citizen husband.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that he accompanies her and resides in Mexico or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her husband, Mr. [REDACTED], in the event that he relocates to Mexico. In this case, the record reflects that [REDACTED]

born in Chicago in 1975, and has lived in Chicago his whole life. *Brief in Support of Appeal, supra, Statement in Support of the Appeal Requesting a Consideration to the Case Denial*; Exhibits A-C). All his relatives live in the United States; his parents, a daughter from a previous marriage, two younger brothers, their spouses, and a niece and nephew all live in Chicago; all of them are U.S. citizens except for his mother who is a legal permanent resident. *Id.*, Exhibits B, D, H-M, T; *see also Statement in Support of the Appeal Requesting a Consideration to the Case Denial*. He has worked at the same company (Alkco Lighting) since 1997, with a salary of \$33,000 in 2003, health insurance for his family and life insurance. *Id.*, Exhibit G. [REDACTED] arrived in the United States in 1995, when she was 15; the couple's daughter was born in 2000 and they were married in 2001. *Form I-485 and accompanying Biographic Information (Form 325A)*, dated April 3, 2001. They bought a house together in 2003, where they currently reside. *Brief in Support of Appeal, supra*, Exhibit N. Tax returns in the record show that [REDACTED] was able to supplement the family income by doing piece work, earning approximately \$17,000 in 2002. *U.S. Individual Income Tax Return (Form 1040) for 2002*. Counsel's assertions that economic and social problems in Mexico would make it extremely difficult for the couple to earn a living there are supported by evidence on country conditions for Mexico. *Brief in Support of Appeal, supra*, p. 7; *see also Id.*, Exhibit R.

The AAO recognizes that the family would suffer economic detriment and their wage-earning potential would be diminished if they moved to Mexico, and that the standard of living, including health benefits, for the couple and their child would be reduced. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted). It is one of the relevant factors to be considered, however, in the analysis of extreme hardship; and in this case, Mr. [REDACTED] would also lose a permanent job that he has held since 1997 and the accompanying benefits of health and life insurance; he would give up the house the couple purchased in 2003; and he would be separated from his extended family. Having been born and raised in the United States and lived his entire life in Chicago with his family, he would also give up the strong family and social ties of his community. These factors lead to a conclusion that [REDACTED] would indeed suffer extreme hardship if he chose to move to Mexico to avoid his and his child's separation from his wife.

The second part of the analysis requires the applicant to establish extreme hardship to her husband in the event that he remains in the United States separated from the applicant. Affidavits in the record from family members and the couple's pastor indicate that [REDACTED] has a strong and loving attachment and is devoted to his wife and young daughter and that he is dependent on his relationship with them for his emotional and psychological well-being. [REDACTED] is the main caretaker for their daughter while Mr. [REDACTED] works. Statements and financial records indicate that he is paid at the rate of \$15.87 per hour, grossing up to \$635 per week for a 40-hour week, and that [REDACTED] supplements this with piece work, earning an average of \$95 per week. [REDACTED] pays \$88 per week as part of his divorce settlement for the support of his daughter from his prior marriage, and the couple pays a mortgage on their house.

[REDACTED] is able to support his family, and the family benefits from the additional income that his wife provides. If his wife were forced to relocate to Mexico, the family income would be reduced and he would need to arrange for childcare. Beyond the financial considerations, and accompanying lifestyle changes necessitated in the absence of his wife, there is nothing in the record to show any hardship [REDACTED] would suffer if the applicant were denied a waiver of inadmissibility beyond what is normally associated with family separation. It is clear that if [REDACTED] chooses to remain in the United States, he will suffer if he

and his child do not have the companionship and care of [REDACTED]. His situation, however, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. As a U.S. citizen he is not required to reside outside of the United States as a result of denial of the applicant's waiver request. It appears that he faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if the applicant is refused admission and Mr. [REDACTED] chooses to remain in the United States with their child. 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 individuals who are deported.

The AAO recognizes that [REDACTED] will endure hardship as a result of separation from his wife. In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of deportation to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under Section 212(i) of the Act, 8 U.S.C. § 1186(i). Having 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(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.