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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

MAY 10 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be 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), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 18, 2004.

The record reflects that, in June 1995, the applicant procured admission to the United States by presenting a U.S. Birth Certificate belonging to another. On January 4, 1998, the applicant married [REDACTED] who was a lawful permanent resident of the United States at the time of the marriage. On September 23, 1999, [REDACTED] became a naturalized citizen of the United States. On June 8, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office on January 7, 2004. The applicant admitted that she had entered the United States using a U.S. birth certificate belonging to another in 1995. The applicant further testified that the last time she entered the United States was in June or July 1996.

On March 31, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel asserts that the district director erred in not finding that the applicant had established extreme hardship to her family members. *Applicant's Brief*, October 13, 2004.

In support of these assertions, counsel submitted the above-referenced brief and copies of documentation previously provided. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
- (ii) Falsely claiming citizenship. –
 - (I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of a U.S. birth certificate belonging to another to enter the United States in 1995. Counsel does not contest the district director's determination of inadmissibility.

Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. 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.

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 at 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).

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 and his spouse have a nine-year old son who is a U.S. citizen by birth. The applicant was born in Mexico and [REDACTED] is a native of Mexico who subsequently became a lawful permanent resident in 1988, then a naturalized citizen of the United States in 1999. [REDACTED] resided in Mexico until he was 17 years old. In 1999, [REDACTED] was sentenced to 7 years of jail in relation to a drug conviction. Federal Bureau of Prisons records indicate that [REDACTED] will be released from prison on August 9, 2006. *Inmate Locator, Federal Bureau of Prisons*, www.bop.gov. The record reflects further that the applicant is in her 30's, [REDACTED] is in his 40's, and [REDACTED] has no health concerns.

Counsel asserts that the applicant's son would suffer extreme hardship if he were to remain in the United States without his mother. Counsel also asserts that the applicant's son would suffer extreme hardship if he were to return to Mexico with his mother. Counsel contends that the district director failed to consider the effect upon the applicant's U.S. citizen child if the applicant were removed from the United States. Counsel argues that, as required by *Salameda v. INS*, 70 F. 3d 447 (7th Cir. 1995), the hardship to the applicant's son should be considered even though he is not a qualifying family member. The legal authority to which counsel cites has no relevance to the instant case. *Salameda* relates to whether the child in question was entitled to ask for suspension of deportation on his own account because he was an illegal alien. The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen son will not be considered in this decision.

Counsel asserts that [REDACTED] would suffer financial hardship if he were to remain in the United States without the applicant. Counsel contends that the applicant's spouse would be unable to obtain creature comforts while he is in prison because the applicant would no longer be able to provide him with money and clothes if she were to return to Mexico. Counsel contends that [REDACTED] will have difficulties finding a job once he is released from prison and may find it difficult to financially support himself without the applicant's

second income or without financial assistance from others. Counsel does not provide financial documentation or an affidavit from [REDACTED] to support this assertion. However, the record reflects that, prior to his incarceration, [REDACTED] held a full-time job, from which he derived a yearly income, which was sufficient to support him, the applicant and his son. Moreover, the record reflects that [REDACTED] resides in the vicinity of family members who may be able to support him financially and physically during both the remainder of his incarceration and after he is released.

Counsel asserts that [REDACTED] would suffer emotional hardship if he remained in the United States and his wife returned to Mexico. Counsel contends that [REDACTED] will suffer extreme emotional hardship during the remainder of his incarceration because the applicant has been his emotional support and he would be permanently separated from the applicant due to his incarceration. To support his contentions, counsel does not submit an affidavit from [REDACTED] but a psychological report that indicates [REDACTED] is likely to develop a severe reactive depression . . . he would be devastated by a separation from his [wife]. . . he has depended on the visits for moral support . . . [REDACTED] is suffering the social and emotional consequences of confinement for his crime.” The report was based on a single meeting with the applicant, the psychologist did not have any direct contact with [REDACTED] either in the form of an interview or a written interrogative, and the psychologist did not diagnose [REDACTED] with a preexisting or current mental or physical illness that requires treatment. The report can, therefore, be given little weight. Furthermore, [REDACTED] incarceration is due to end in less than four months, rendering any added psychological stresses imposed upon [REDACTED] as a consequence of his incarceration temporary in nature. Counsel does not assert and there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, [REDACTED] has family members, such as his siblings, to support him emotionally in the absence of his wife.

Counsel asserts that the applicant’s spouse would face extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel contends that [REDACTED] would face extreme hardship because he has resided in the United States since the age of seventeen, it would be an emotional hardship to leave his family in the United States, and the substandard economic situation in Mexico would not afford him the employment and standard of living opportunities that he would have in the United States. To support his contentions, counsel does not submit an affidavit from [REDACTED], but a psychological report that indicates “[REDACTED] will have to adjust to life after prison and find work in an economy with high unemployment . . . [he] will have to give up the former relationships, network or contacts, and years of experience that would help re-establish himself in Chicago . . . [moving] to Mexico also entails losing the close relationships [REDACTED] has with his brothers and sisters in the U.S. . . . these stressors are likely to trigger depression because they all signify losses of one kind or another.” The report was based on a single meeting with the applicant, the psychologist did not have any direct contact with [REDACTED] either in the form of an interview or a written interrogative, and the psychologist did not diagnose [REDACTED] with a preexisting or current mental or physical illness that requires treatment. The report can, therefore, be given little weight. Counsel also provides country condition reports for Mexico to support his assertions. However, there is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to find any employment in Mexico. While the hardships faced by [REDACTED] with regard to re-adjusting to the culture, economy and environment are unfortunate; they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Moreover, [REDACTED] has family members in Mexico, such as his father and mother, who may be able to assist him

financially and emotionally. Finally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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. § 1182(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 an 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.