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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: OCT 25 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). 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 who was found 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). The applicant is the spouse of a naturalized U.S. citizen, the father of two U.S. citizen children and the step-father of two U.S. citizen children. He 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 his spouse and children.

The district director denied the application for waiver, finding that the applicant failed to establish that a qualifying family member would suffer extreme hardship. *Decision of District Director*, dated November 22, 2004.

The record reflects that, on January 9, 1997, the applicant applied for admission at the San Ysidro, California, Port of Entry. The applicant presented an I-551 Lawful Permanent Resident Card belonging to another, under the name [REDACTED]. The applicant was found inadmissible pursuant to 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant without valid entry documents. On January 15, 1997, an immigration judge ordered the applicant removed from the United States and the applicant was returned to Mexico the same day. On an unknown date, the applicant reentered the United States without lawful admission or parole. On January 26, 2001, the applicant married his naturalized U.S. citizen spouse, [REDACTED]. On May 2, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a 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) Los Angeles District Office on March 7, 2002. The applicant testified that, in 1997, he attempted to enter the United States by presenting a Lawful Permanent Resident Card that belonged to another.

On August 27, 2003, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel asserts that the applicant is the sole source of income to his wife, their son, his wife's two children from a previous relationship, and his daughter from a previous relationship. *See Applicant's Brief*, dated January 18, 2005. Counsel also asserts that the applicant's son has a medical condition that causes easy fatigue and requires further tests and treatment. To support her assertions, counsel submitted the above-referenced brief, medical documentation, copies of birth certificates of the applicant's spouse's two children from a previous relationship, school records and letters of support from the applicant's son and two step-children. The entire record was reviewed in rendering a decision in this case.

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.

- (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 district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on immigration records and the applicant's admitted use of a lawful permanent resident card in order to attempt to procure admission into the United States in 1997. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. 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. 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 children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 [REDACTED] is a native of Mexico who became a lawful permanent resident in 1988 and a naturalized U.S. citizen in 2000. The applicant and his wife have ten-year old son who is a U.S. citizen by birth. There is evidence in the record that the applicant's son has some health concerns [REDACTED] has a 25-year old son and an 18-year old daughter from a previous relationship, who are both U.S. citizens by birth. The applicant has a **daughter of unknown age and citizenship from a previous relationship. The record reflects further that the applicant and [REDACTED] are in their 40's and there is no evidence that [REDACTED] or the other children have any health concerns.**

Counsel contends that [REDACTED] would suffer extreme hardship if the applicant were removed from the United States because he is the sole financial provider for the family, he acts as a father to his two step-children and their son has cardiac dysrhythmia which causes easy fatigue. [REDACTED] in her affidavits, states that she is not working, the applicant is the main source of income for the household and she needs the applicant to assist her with childcare duties for their son, as well as for emotional support. The record indicates that [REDACTED] was employed from 1996 until 1999. There is no evidence in the record to suggest that [REDACTED] would be unable to earn sufficient income to support herself and her family. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, there is no evidence to indicate that [REDACTED] children's biological father is not involved in their life or that the biological father would be unable to provide physical and financial support to the applicant's step-children. Furthermore, school records for [REDACTED] daughter indicate that she no longer resides in Huntington Park, California, with the applicant and [REDACTED] but has moved to Arizona. Moreover, there is no evidence that the applicant's daughter from a previous relationship resides with the applicant and [REDACTED] or that the applicant's daughter's biological mother is not involved in her life or would be unable to provide physical and financial support to the applicant's daughter. Finally, there is no evidence in the record to suggest that Ms. Baez' adult son is financially dependent upon the applicant and [REDACTED]

Medical documentation establishes that the applicant's son has been diagnosed with a cardiac rhythm irregularity since 2000. However, the medical documentation indicates that there are no structural abnormalities with the heart, the applicant's son's cardiac rhythm irregularity is not related to the applicant's son's fatigue with exertion, and the cardiac rhythm irregularity is benign and does not require treatment. The AAO notes that, while counsel asserts that further tests are required to ascertain the origin, diagnosis, prognosis and treatment of the applicant's son's condition, the medical documentation, dated in 2002, indicates a diagnosis and prognosis that does not require further treatment for the applicant's son's condition. Finally, the medical documentation does not indicate that the applicant's son requires assistance from the applicant or any other person to function on a daily basis. There is no evidence in the record to suggest that

suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel, the applicant and do not contend that would suffer hardship if she were to return to Mexico with the applicant. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should she return with the applicant to Mexico. Additionally, 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 and, as discussed above, would not experience extreme hardship if she remained in the United States without the applicant.

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 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 his 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 he merits a waiver as a matter of discretion. The AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking to enter the United States after having been removed.

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.