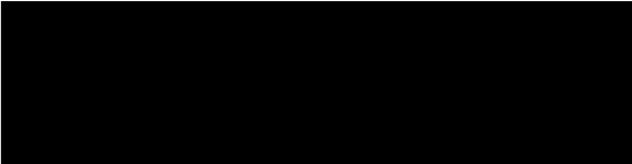




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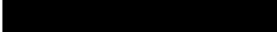
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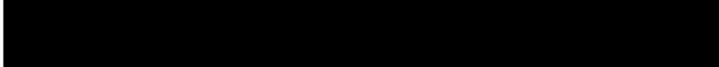


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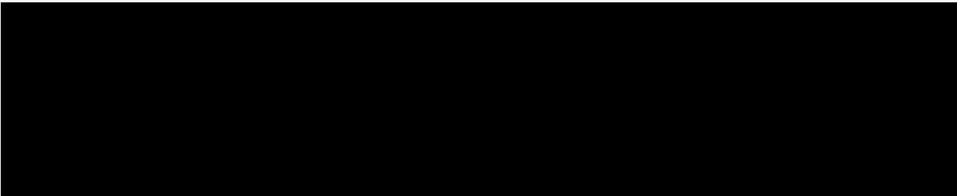
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IN RE:



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:



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, 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 Guatemala who is 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the father of a U.S. citizen child. 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 child.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 28, 2005.

The record reflects that, on June 19, 1995, the applicant applied for admission at the San Ysidro, California Port of Entry. The applicant made an oral false claim to U.S. citizenship and presented an Illinois drivers license. The applicant was denied admission when he was unable to provide documentation that he was a U.S. citizen and finally admitted that he was not a U.S. citizen. The applicant claimed to be a citizen of Mexico and was permitted to return voluntarily to Mexico. On November 11, 2000, the applicant married his naturalized U.S. citizen spouse, [REDACTED]. On May 3, 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 on his behalf by [REDACTED]. On February 1, 2005, the applicant appeared at the Citizenship and Immigration Services' (CIS) Chicago, Illinois District Office. He admitted that he had attempted to enter the United States by making a false claim to U.S. citizenship. On February 9, 2005, 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 May 24, 2001, the applicant testified during his advance parole application interview that he had entered the United States without inspection on June 19, 1995.

On appeal, counsel contends that the district director failed to analyze and address the factors presented by the applicant in adjudicating the waiver application. *See Counsel's Brief*, submitted March 29, 2005. Counsel, in support of her assertions, submits the referenced brief and country conditions reports. 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.
- (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 admission to making a false claim to U.S. citizenship in an attempt to procure admission into the United States in 1995. On appeal, 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. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen child 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, 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).

On appeal, counsel asserts that the district director misconstrued the issue before him when he stated that there was no law requiring [REDACTED] to leave the United States. Counsel asserts that the issue in applying “extreme hardship” is not whether the law requires a U.S. citizen to depart the United States but whether the U.S. citizen will suffer extreme hardship if he or she does leave the United States. On appeal, she focuses solely on the hardship that would face [REDACTED] were she to relocate to Guatemala with the applicant. However, counsel fails to recognize that in establishing extreme hardship, an applicant must demonstrate that the qualifying relative would suffer extreme hardship whether he or she remains in the United States or accompanies the applicant to the foreign country of residence, as the qualifying relative is not required to reside outside the United States as a result of the denial of the applicant’s waiver request.

The record reflects that [REDACTED] is a native of Poland who became a lawful permanent resident in 1981 and a naturalized U.S. citizen in 1986. The record reflects that, in June 1999, the applicant and [REDACTED] buried their first-born child. The applicant and [REDACTED] have a six-year old son who is a U.S. citizen by birth. The applicant and [REDACTED] are in their 40’s. There is no evidence in the record that [REDACTED] has any health concerns.

On appeal, counsel does not assert that [REDACTED] would suffer extreme hardship if she remained in the United States without the applicant. [REDACTED] in her affidavit, states that both of her parents grew up without fathers and carry the resentment of not having their fathers in their lives. She states that she fears her son will feel resentment toward her if she does not follow the applicant to Guatemala. She states that, after the death of their child, the applicant was her rock when she blamed herself and was living with the possibility of not becoming a mother. She states that this tragedy has strengthened their relationship, as they grew closer

through their grief. She states that she could not bear to let the applicant go to Guatemala alone, because he would never abandon her.

Counsel states that [REDACTED] is a self-employed artist who earned \$23,000 in 2003. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While the AAO acknowledges that [REDACTED] may have to lower the family's standard of living, the record does not contain any evidence that establishes that [REDACTED] would be unable to support herself and her child without the financial support of the applicant. Further, although 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, these hardships are commonly encountered by aliens and families upon removal. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and her child without additional income from the applicant, even when combined with the emotional hardship described below.

While the AAO acknowledges the emotional trauma of losing a child, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause her to suffer physical or emotional hardship beyond that commonly suffered by aliens and families upon removal. Neither does the record indicate that she has previously undergone treatment for any psychological consequences related to the death of her first child. While the AAO acknowledges [REDACTED] may be concerned that the applicant's child would essentially be raised in a single-parent environment, this hardship is often faced by aliens and families upon removal. Additionally, while it is unfortunate that [REDACTED] and her child would experience distress and some level of depression as a result of their separation from the applicant, these emotions are normally felt by aliens and families upon removal. Finally, the record indicates that [REDACTED] has family members, such as her parents, in the United States who may be able to assist her financially, physically and emotionally in the absence of the applicant.

On appeal, counsel asserts that [REDACTED] would suffer extreme hardship if she accompanied the applicant to Guatemala because she has resided in the United States for twenty-three years and the impact of leaving her parents alone, especially since they are elderly and infirm, is of great concern to her because she is the only family member who lives close to them. Counsel asserts that [REDACTED] has no ties to and no means of support in Guatemala. Counsel asserts that [REDACTED] does not speak Spanish and will therefore find it impossible to find employment. Counsel asserts that [REDACTED] is not familiar with the customs, mores or language of Guatemala and there are high rates of crime and human rights violations, which go unpunished. Counsel asserts that sexual harassment is not against the law and women are, therefore, not protected against it in the workforce. Counsel asserts that the police commit many crimes, cases languish in the court system and no resolution is available to witnesses who are often intimidated or killed. Counsel asserts that there is a high rate of lynching, which occurs without police intervention, and the Guatemalan government has a serious problem with judges, prosecutors and witnesses receiving death threats. Counsel asserts that, despite [REDACTED] lack of association with any of the groups targeted by these crimes, she cannot feel protected in a country in which even those who have power cannot be protected. Counsel asserts that foreign residents of Guatemala have special concerns and there have been numerous murders of U.S. citizens in Guatemala with only one conviction. Counsel asserts that while [REDACTED] has private health insurance for her family in the United States, in Guatemala over 1 million families do not receive even the

most basic health care services. Counsel asserts that the high poverty rate and unemployment rate, coupled with [REDACTED] lack of property or family support in Guatemala will cause her future there to be dire.

[REDACTED] in her affidavit, states that she does not want to leave the United States because she has spent a greatest portion of her life here and her immediate family also lives here. She states that she is terrified at the prospect of traveling to Guatemala because she not only fears that she and the applicant would be at a disadvantage, but that she would be moving to one of the worst places imaginable. She states that it is a dangerous and underdeveloped country and the thought of having to move to a new country again fills her with terror since she remembers how hard it was for her to move to the United States from Poland. She states that the experience of moving to the United States and overcoming the cultural and language barriers during her high school years was traumatic and has had long lasting effects on her self esteem and the way she perceives herself. She states that this low self-esteem led her to enter into an unhealthy relationship and it took her five years to break free from this relationship. She states that she swore that she would never subject herself or her child to that type of hardship and she is terrified that the nightmare is coming back to haunt her.

Counsel states that approximately 83 percent of the Guatemalan population lives in poverty and that 59 percent live in extreme poverty with a combined unemployment and underemployment rate of 46 percent, but submits no evidence that demonstrates that [REDACTED] and the applicant would fall within any of these categories. Nor is evidence in the record to establish what the characteristics of these populations are. Accordingly, the record does not demonstrate that the applicant and [REDACTED] would be unable to obtain *any* employment in Guatemala. The record does not provide proof that in pursuing her artistic career in Guatemala, [REDACTED] would be required to speak Spanish. Moreover, learning to speak a foreign language is a challenge commonly faced by families and aliens upon removal. While the employment the applicant and [REDACTED] may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). There is no evidence in the record to suggest that [REDACTED] or her child suffer from a mental or physical illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. [REDACTED] asserts that she is subject to low self-esteem and would suffer additional psychological hardship due to her background as an immigrant who experienced a difficult transition in the United States. There is, however, no evidence in the record to support her claims in this regard. While [REDACTED] asserts that her parents are elderly and infirm which would cause her additional psychological hardship to be separated from them, there is no evidence in record, besides affidavits, that her parents suffer from any mental or physical illnesses or that they rely on her financially. Additionally, while [REDACTED] asserts that she is the only one who resides close to them, the record reflects that she has an adult brother in the United States who may be able to assist her parents financially, physically and emotionally in her absence. While the hardships that would be faced by [REDACTED] upon relocation to Guatemala—her and her child's adjustment to the culture, country, economy, environment, separation from her friends and family and the inability to pursue opportunities and receive healthcare that are available in the United States—are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. The AAO, however, finds that, when combined with the other factors just noted, the level of violent crime in Guatemala, specifically targeting of tourists and foreign residents, establishes that [REDACTED] relocation to that country would constitute extreme hardship. However, as previously noted, [REDACTED] 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, [REDACTED] 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 removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions 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, Supra*; *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 has 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.

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.