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FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: APR 13 2007

IN RE:

PETITION: 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 PETITIONER:

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 waiver application was denied by the district director, Los Angeles, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the daughter of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her mother and daughter.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her mother, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's mother would suffer extreme hardship if the applicant were required to return to Mexico, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 that:

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 of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's mother. 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).

Thus, the first issue to be addressed is whether the applicant's return to Mexico would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. 22 I&N Dec. at 565-566.

The record establishes that the applicant attempted to enter the United States, fraudulently, in January 1996. The applicant obtained the birth certificate of a United States citizen, [REDACTED] and used this birth certificate to enter the country, claiming she was [REDACTED] and therefore a citizen of the United States.<sup>1</sup> Upon presentation of this birth certificate to an immigration inspector with the intent of entering the United States, she was questioned and ultimately removed to Mexico on February 5, 1996.<sup>2</sup> Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her name and citizenship status) in order to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). A Form I-130, Immigrant Petition for Alien Relative, filed on behalf of the applicant, was approved on February 12, 1992. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on March 1, 2000, and the instant Form I-601 was filed on July 24, 2001. She does not dispute her inadmissibility.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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

<sup>1</sup> The applicant claimed that [REDACTED] gave this birth certificate to her in Tijuana, Mexico.

<sup>2</sup> According to a June 29, 2001 interview, the applicant entered the United States, without inspection, approximately 22 days later.

availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held that:

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 mother is a fifty-eight-year-old citizen of the United States. She has been a citizen since 1999, and has lived in the United States since 1975. According to information contained in the record, she has seven children: [REDACTED] (age 36), the applicant (age 32), [REDACTED] (age 28), [REDACTED] (age 19), [REDACTED] (age 16), [REDACTED] (age 13), and [REDACTED] (age not provided). All are United States citizens, except for the applicant. The applicant’s mother is married to the applicant’s stepfather.

The applicant has been employed by Subway Sandwiches and Salads franchise in Fresno, California since 2003. According to the applicant, she has lived in the United States since 1989, when she arrived for the first time at the age of fifteen. The applicant has a United States citizen daughter, [REDACTED], who was born in Fresno on December 4, 1999.

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.") This AAO notes that this matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in this case.

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also that, "[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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

As the only qualifying relative in this matter is the applicant's mother, the AAO's first line of inquiry is to assess the hardship she would experience if the applicant were to return to Mexico. In her December 4, 2004 affidavit, the applicant's mother states the following:

My daughter is a very important part of my life. She means everything to me. We have a close relationship . . . Due to her being single, our relationship is probably much closer than if she was married. We spend a lot of time together. . . .

[My daughter and granddaughter] reside with me.<sup>3</sup> We eat our meals together, we cook together[,] and help each other with housework. [The applicant] does many of the things I am unable to do around the house. I do not know what I would do without [the applicant] around to help me with things. . . .

We spend all our free time together, sometimes with other family members. We rely on each other for emotional support and well being. If I become ill, I know that [the applicant] is there to assist me. That gives me a sense of comfort and security that I will not have if [the applicant] is forced to leave the United States. . . .

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<sup>3</sup> The record contains a letter stating that the applicant works at a Subway Sandwiches and Salads franchise in Fresno, California five days per week. Her November 4, 2004 paystub lists an address in Fresno as her residence. In her affidavit, the applicant's mother provides a Los Angeles address as her place of residence, and states that the applicant lives with her. It is incumbent upon the petitioner (or, in this case, the applicant) to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner (the applicant) submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[The applicant] also gives me money when she can. . . .

I would be devastated if she cannot continue to reside with me. I would also be devastated if she left the United States and took [my granddaughter] with her. . . .

I worry what would become of [them] if they were forced to live in Mexico. I worry that they could not survive. . . .

It is not possible for me to move to Mexico. . . .

My life is in the United States . . . I could not financially survive in Mexico. I also have few relatives left there . . . I am terrified of living in Mexico because there are no jobs in Mexico for someone my age. . . .

[My husband] suffers from medical problems that require him to remain in the United States. He has diabetes and kidney and liver problems. He requires dialysis every three days. I care for him and cannot leave him. . . .

If [the applicant] is forced to return to Mexico, my family would be torn apart. For the reasons I have described, I do not believe I could go live in Mexico with her. I would suffer irreparable emotional harm if that happened to our family. I believe that I would suffer the level of extreme emotional hardship necessary for the waiver my daughter needs.

In his appellate brief, counsel contends that the hardship the applicant's mother would face upon her daughter's return to Mexico rises to the level of "extreme hardship." Counsel also contends that the applicant's daughter, a United States citizen, would also face extreme hardship. However, the AAO notes that hardship to the applicant's daughter is not a consideration in this case; Congress has specifically limited application of the section 212(i) waiver to cases where it can be shown that extreme hardship would befall a spouse or parent of the applicant.

In the instant case, the applicant is required to demonstrate that her mother would face extreme hardship in the event the applicant is refused admission, regardless of whether her mother accompanies her to Mexico.

The AAO finds that the applicant's mother would face extreme hardship if the applicant is refused admission and her mother accompanies her to Mexico. The applicant has proven that her mother's husband suffers from end stage renal disease, which requires hemodialysis three times per week. According to his doctor, he is physically incapacitated and cannot travel or leave the United States. If she accompanied her daughter to Mexico, the applicant's mother would lose the ability to care for her husband, as he could not travel with them to Mexico.

However, if she remains in the United States, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, demonstrates that the applicant's mother faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the emotional hardship and family disruption that she would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the district director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's mother would suffer hardship beyond that normally expected upon the deportation or refusal of entry of a daughter.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen mother would suffer hardship that is unusual or beyond that normally expected upon removal of a daughter. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.