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U.S. Citizenship
and Immigration
Services

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APR 23 2007

FILE: [REDACTED] Office: PHOENIX, AZ Date:

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: Self-represented

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 Acting District Director, Phoenix, Arizona, 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 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 U.S. citizen, the father of a U.S. citizen child, the stepfather of a U.S. citizen child and the son of a lawful permanent resident father and a naturalized U.S. citizen mother. 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, children and his parents.

The acting 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 Acting District Director*, dated September 26, 2005.

The record reflects that, on September 12, 1993, the applicant applied for admission at the Nogales, Arizona Port of Entry. The applicant was charged with making a false claim to U.S. citizenship. The applicant was denied admission and was permitted to return voluntarily to Mexico. On March 17, 2001, the applicant married his U.S. citizen spouse, [REDACTED]. On August 24, 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 April 30, 2004, the applicant appeared at the Citizenship and Immigration Services' (CIS) Phoenix, Arizona District Office. He testified that he had attempted to enter the United States by presenting the U.S. birth certificate for his brother, [REDACTED] Sedano. On August 15, 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 appeal, the applicant contends that his wife and father would suffer extreme hardship if he were denied the waiver. *See Applicant's Brief*, submitted October 31, 2005. The applicant, in support of his assertions, submits the referenced brief, medical documentation, financial documentation and a psychological report. 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 acting district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the record reflecting and the applicant's admission to making a false claim to U.S. citizenship in an attempt to enter the United States in 1993. On appeal, the applicant does not contest the acting 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 children will not be considered in this decision, except as it may affect the applicant's spouse and parents, the only qualifying relatives.

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).

Since an applicant’s qualifying relative is not required to reside outside of the United States as a result of denial of the applicant’s waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

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 father, [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 1977. The applicant’s mother, [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] have a three-year old daughter who is a U.S. citizen by birth. [REDACTED] has a nine-year old daughter from a previous relationship who is a U.S. citizen by birth. The applicant is in his 30’s, [REDACTED] is in her 20’s, and the applicant’s parents are in their 50’s.

The applicant, at the time of filing, contended that the most important factor in determining extreme hardship is separation from family and that such separation is not truly viewed as the extreme hardship it should be. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) 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. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of deportation to constitute “extreme hardship.”

On appeal, the applicant asserts that his father, who is terminally ill with cancer, would suffer extreme hardship if the applicant were removed from the United States. The applicant asserts that he and his wife contribute to the support of his father, who is unable to work due to his illness. The applicant asserts that his father is very ill with cancer and his prognosis for recovery is poor. The applicant asserts that, of all the family members, he lives the closest to this father since he lives across the street from him. The applicant asserts that, due to his lack of health insurance and the relatively low cost of treatment in Mexico, the applicant’s father travels to Mexico for treatment. The applicant asserts that he takes on the responsibilities of other family members since his other siblings are in other cities and have not taken as much interest in helping his mother and father, either due to financial or locality reasons. The applicant asserts that he arranges for a friend or relative to take his father to Mexico for treatment and ensures that his father has food and his bills are paid. The applicant asserts that the situation is even more critical because his mother recently left his father and they are now divorced, leaving his father without a live-in caretaker. The applicant asserts that, at times, his father becomes bedridden, particularly after his cancer treatments, and depends on the applicant to assist him with his care, especially the personal problems which he does not feel comfortable trusting to anyone other than the applicant. The applicant asserts that the family does not have sufficient funds to pay for private homecare for his father.

Medical documentation in regard to the applicant’s father is in the Spanish language and has no translation. Any document containing a foreign language shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(a)(3). The AAO notes that the medical documentation appears to contain drug prescriptions for Daonil, Viagra, Primperam, and Pantozol, which the record fails to demonstrate are prescribed in treating cancer. Further, the medical documentation submitted by the applicant does not appear to include any medical evaluation or diagnosis establishing his father’s medical condition or his prognosis. Going on record without supporting documentary evidence is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not establish that the applicant’s father or mother suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that the applicant’s parents would experience distress and depression as a result of separation from their son, this would not constitute a hardship that is beyond that commonly suffered by aliens and families upon removal.

While the record contains evidence that the applicant and his wife have paid some of the applicant’s father’s household bills, the record contains no evidence that the applicant’s father is financially or physically dependent upon the applicant. While the applicant asserts that his other adult siblings have not taken an

interest in supporting his father, the applicant's father has other family members in the United States, who may be able to assist him financially, physically and emotionally in the absence of the applicant. There is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to the applicant's parents if they had to support themselves without the applicant's assistance, even when combined with the emotional hardship described above.

On appeal, the applicant asserts that [REDACTED] has sought treatment for depression due to stress. The applicant asserts that she is extremely upset and depressed at the idea of handling all of the family responsibilities without the applicant and feels overwhelmed. The applicant asserts that [REDACTED] would have to support her children on one income and would have to face difficult questions regarding the applicant's absence from their lives. The applicant asserts that the oldest child has bad dreams and is not doing well in school after she overheard some of the details of the applicant's immigration situation.

A brief psychological report states that [REDACTED] was evaluated for possible depression due to daily crying episodes, extreme restlessness and easy irritability. The psychological report states that recent psychological stressors include downsizing at work leading to greater responsibilities and the applicant's immigration status. The report indicates that [REDACTED] does not have a history of counseling or treatment for depression or anxiety. The psychological report concludes that [REDACTED] will start on Zoloft and follow up for a re-evaluation. It also indicates that [REDACTED] will enroll in counseling through her employee assistance program at work.

The submitted psychological report consists of a several paragraph synopsis of a single interview between the applicant's spouse and the doctor who conducted the evaluation. Accordingly, it does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering the doctor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that [REDACTED] has received psychological treatment or evaluation other than during the appointment on which the submitted psychological report is based. Accordingly, the evaluation will be given little evidentiary weight. Additionally, the AAO notes that the psychological report was conducted after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. There is no evidence in the record, besides the psychological report, that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would experience distress and depression as a result of separation from her spouse and the separation of her children from their father, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as her parents, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The record reflects that [REDACTED] earned \$20,887 in 2002. 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 to suggest that [REDACTED] would be unable to support herself and her children without the

financial support of the applicant. Further, although it is unfortunate that [REDACTED] would essentially become a single parent, this is also not a hardship that is beyond those commonly suffered 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 children without additional income from the applicant, even when combined with the emotional hardship described above.

On appeal, the applicant does not assert that his parents would suffer extreme hardship if they accompanied him to Mexico. The AAO is, therefore, unable to find that the applicant's parents would suffer extreme hardship should they choose to accompany the applicant to Mexico.

On appeal, the applicant asserts that [REDACTED] would suffer extreme hardship if she accompanied the applicant to Mexico because they have no relatives in Mexico to assist them. He asserts that he does not want his children to be raised in Mexico because of the poverty stricken environment. He asserts that the children are not accustomed to the food and water in Mexico and would be susceptible to illness and infections more than Mexican children. He asserts that his oldest child does not speak Spanish and that, while his wife speaks some Spanish, she would be relegated to accepting menial jobs in Mexico due to the language barrier and because, due to her status as a U.S. citizen, she does not have the right to live and work in Mexico. He asserts that, despite his college education in the United States, he would have to accept a low paying job that would not permit him to send money to his parents in the United States, let alone support his family. He asserts that the family would leave behind the companionship of their aunts, uncles, siblings, cousins, parents and grandparents.

Having analyzed the hardships the applicant claims [REDACTED] would suffer if she were to accompany him to Mexico, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record to establish that [REDACTED] would be unable to obtain legal status in Mexico, as the spouse of a Mexican citizen, enabling her to live and work in Mexico. There is no evidence in the record to confirm that [REDACTED] and the applicant would be unable to obtain *any* employment in Mexico and economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir. 1986)*. As the record does not establish that the applicant's children suffer from a physical or mental condition that requires treatment or would cause them to suffer greater illnesses and infections than other children in Mexico it fails to demonstrate that their health upon relocation would pose an extreme hardship for [REDACTED]. While the hardships that would be faced by [REDACTED] in relocating to Mexico—her and her children adjusting to the culture, economy, environment, language, separation from friends and family, and an inability to obtain the same opportunities they would receive in the United States—are unfortunate, they are what would normally be encountered by any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes, as previously indicated, that the applicant's spouse and parents are 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] and the applicant's parents would not experience extreme hardship if they remained in the United States without the applicant.

The applicant contends that [REDACTED]'s decision, to remain in the United States without the applicant and essentially end her marriage, or to join the applicant in Mexico, would result in extreme hardship. However, the act of making a choice between living in the United States or joining an applicant in a foreign country is

not beyond the hardships normally faced by aliens and families upon removal, as it is the choice that every spouse must make when an alien spouse is removed.

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 and parents would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] and the applicant's parents would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse or son 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 and mother and lawful permanent resident father 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.