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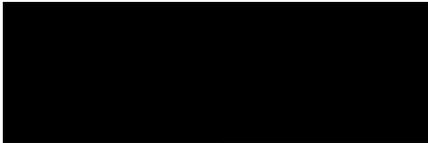
U.S. Department of Homeland Security
20 Mass. Rm. 3000,
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: LOS ANGELES Date: JAN 10 2007

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 District Director, Los Angeles, California, 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 having attempted to procure immigration benefits in the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen, the father of two U.S. citizen children and the son of lawful permanent resident parents. 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 parents.

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 November 19, 2004.

The record reflects that, on April 12, 1994, the applicant filed an Application for Asylum or Withholding of Removal (Form I-589), in which he stated he was seeking asylum as a native and citizen of Peru. On June 28, 1994, the Form I-589 was denied because the applicant failed to appear for an interview. On October 25, 1996, the applicant requested and was granted a motion to reopen the Form I-589. On December 5, 1996, the Form I-589 was again denied because the applicant failed to appear at the interview. On February 13, 1999, the applicant married his spouse, [REDACTED] (Ms. [REDACTED]). On May 6, 1999, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. On September 10, 1999, the Form I-130 was approved. On June 14, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On September 10, 2001, the applicant filed the Form I-601.

On appeal, the applicant contends that the Form I-601 should be remanded to the district director in order to permit him to submit documentation in accordance with the request for additional evidence that was issued on September 17, 2004. *See Applicant's Brief*, dated December 10, 2004. In support of his contentions, the applicant submitted the above-referenced brief, an affidavit from his spouse and a copy of a request for evidence. 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)(i) of the Act on the applicant's claim to be a native and citizen of Peru on Form I-589 in order to procure immigration benefits under the Act in 1994. On appeal, the applicant does not contest the district director's determination of inadmissibility.

On appeal, the applicant contends that the application should be remanded to the district director in order to give him an opportunity to submit evidence that a qualifying family member would suffer extreme hardship because the district director did not give the applicant a fair opportunity to submit documentation proving extreme hardship before issuing a decision on the application. The applicant asserts that he was issued a request for evidence to submit documentation reflecting a qualified family member would suffer extreme hardship. The evidence was to be submitted within 90 days of the issuance of the request for evidence on September 17, 2004. The applicant asserts that the case should be remanded because the district director issued a decision only 62 days after the request for evidence was issued. However, the applicant has been given an opportunity to submit evidence on appeal and there is no need to remand the case to the district director.

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. 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 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 Ms. _____ a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1996. The applicant and Ms. _____ have a seven-year old son who is a U.S. citizen by birth. There is no birth certificate in the record for the applicant's claimed second U.S. citizen child. However, Ms. _____ affidavit indicates that they have a second child who is six-years old and a U.S. citizen by birth. The applicant's father and mother are natives and citizens of Mexico who became lawful permanent residents in 1996. The record reflects further that the applicant and Ms. _____ are in their 40's, the applicant's parents are in their 60's and 70's and there is no evidence in the record to suggest that Ms. _____ the applicant's children or his parents have any health concerns.

The applicant and Ms. _____ do not assert that the applicant's parents would suffer extreme hardship if they were to remain in the United States without the applicant or accompany the applicant to Mexico. The AAO is, therefore, unable to find that the applicant's father and mother would experience hardship should they remain in the United States without the applicant or return with the applicant to Mexico.

Ms. _____ in her affidavit, asserts that she would suffer extreme hardship if she were to remain in the United States without the applicant because they have two U.S. citizen children and it would be difficult for a woman her age to support two children. Ms. Gonzalez further states that she and her children would lose the applicant's love and companionship, and her entire family would end up living in poverty because she would be unable to support them.

Financial records indicate that, in 2000, Ms. _____ earned approximately \$15,700. The record reflects that Ms. _____ has family members in the United States, such as the applicant's parents and her parents, who may be able to assist her physically and financially in the absence of the applicant. The record shows that, even without assistance from the applicant or other family members, Ms. _____ in the past, has earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that Ms. _____ 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. While Ms. _____ may have to lower her standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Ms. _____ if she had to support herself and her family without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that Ms. [REDACTED] or her children suffer from a physical or mental illness that would cause Ms. [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that Ms. [REDACTED] will be separated from the applicant and the applicant's children will essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, the record indicates that Ms. [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.

Ms. [REDACTED] in her affidavit, asserts that she would suffer extreme hardship if she accompanied the applicant to Mexico because her children would not have the same educational opportunities in Mexico as they would in the United States and she would suffer extreme psychological pain because their lives are fully established in the United States. While the hardships Ms. [REDACTED] faces are unfortunate with regard to adjusting to a lower standard of living, separation from friends and family, leaving her established life in the United States and her children missing an opportunity to be educated in the United States, these hardships are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children 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, Ms. [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 or parents would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED] and the applicant's parents will face no greater hardship than 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*, 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 his U.S. citizen spouse or lawful permanent resident parents 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.