

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

tlz

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, ARIZONA

Date: JUL 02 2007

IN RE:

Applicant:

[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.

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 Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). 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 40-year-old 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 record reflects that the applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility in order to remain in the United States with her family and adjust her status to that of a lawful permanent resident under section 245 of the Act, 8 U.S.C. § 1255, as the beneficiary of an approved relative petition filed on her behalf by her spouse.

The acting district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. On appeal, the applicant contends that the acting district director failed to give proper consideration to all the relevant hardship factors, including the applicant's separation from the family and the indirect hardship to the father transferred from the children. *See* Statement by the Applicant on Form I-290B, Notice of Appeal. The AAO has reviewed the entire record, *de novo*, and considered all of the applicant's claims individually and in the aggregate.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on the fact that she entered the United States in 1996 by presenting a fraudulent permanent resident card. The applicant does not dispute this finding. The district director's determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). 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. Hardship to the applicant herself is not a permissible consideration under the statute.

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).

The applicant's spouse, [REDACTED], is a 40-year-old naturalized U.S. citizen. The applicant and her spouse were married in 1996 in Mexico. The couple has two children, born in 1998 and 1999 in the United States. The applicant's spouse is a native of Mexico, but has resided in the United States for over 20 years. The applicant's spouse claims that he would face extreme hardship should the applicant not be granted the waiver and allowed to remain in the United States. See Declaration of [REDACTED], dated November 17, 2002. Specifically, the applicant's spouse states that extreme hardship would result if his wife were separated from the family, or if the family were to relocate to Mexico. *Id.* The applicant's spouse explains that if he remained in the United States with his children, there would be no one to care for them. *Id.* Alternatively, should the children relocate to Mexico, they would have limited educational, social and economic opportunities there. *Id.* He further explains that he has no family in Mexico, and that most of his family resides in the United States. *Id.* The applicant's spouse states that he could not relocate to Mexico because he would be unable to find adequate employment. *Id.* He further explains that he owns his home, has two nice cars, savings, and a stable income in the United States. *Id.*

In addition to the applicant's spouses' declaration, the record also contains the applicant's own declaration as well as declarations executed by family members and friends. The record also contains a letter from the applicant's children's physician, a letter certifying their church membership, a letter from the children's schools, a letter from U-Haul certifying the applicant's spouses' employment, tax and financial documents, and documents relating to the economic, social and political conditions in Mexico.

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 is denied the waiver. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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).

While the AAO has carefully considered the impact of separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “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”). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s spouse due to the potential separation from the applicant rises to the level of extreme. The AAO has also considered the applicant’s claim regarding the living conditions in Mexico. The AAO notes that the applicant’s spouse stated in his declaration that he would choose not to relocate to Mexico and, as such, the living conditions in Mexico are only relevant to the extent that their impact on the family in Mexico may cause hardship to the applicant’s spouse. The AAO notes that the applicant’s children, as U.S. citizens, would not be required to depart the United States and doing so would be a matter of the family’s choice. The AAO finds that the claimed hardship that would result from the applicant and her children relocating to Mexico, such as the lower standard of living and reduced educational opportunities, are common results suffered by any family in the applicant’s circumstances and therefore do not amount to “extreme hardship.” *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (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”). The AAO notes that the applicant’s spouse stated that he has a good income in the United States, as well as a network of family and friends in the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.