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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

JUL 05 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated June 27, 2006. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record conveys that the applicant presented to U.S. immigration officials a Form I-186 Border Crossing Card bearing the name [REDACTED], a document that did not belong to him, so as to gain entry into the United States. The applicant stated that his correct and complete name is [REDACTED] *Record of Sworn Statement, Form I-263A, sworn and subscribed on January 18, 1990.*

Accordingly, the evidence in the record supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. The applicant sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact by presenting to U.S. immigration officials a document not belonging to him so as to gain admission to the United States.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

- (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.

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 to the applicant and his children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in the present case are the applicant's father and mother who are lawful permanent residents. 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 AAO notes that the instant case arises within the jurisdiction of the Ninth Circuit Court of Appeals; thus, the decisions of that court will be given weight in rendering this decision.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

In applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's father and mother must be established in the event that he or she joins the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel makes the following statements. The applicant is 38 years old and he has resided in the United States for almost 20 years. He has five U.S. citizen children and two sisters who are lawful permanent residents. The applicant provided ample evidence to establish extreme hardship to his parents if his waiver

application is denied. The term “extreme hardship” is defined in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978) and *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). *Cerrillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987), indicates that all factors must be considered in the hardship determination. *Turri v. INS*, 997 F.2d 1306 (10th Cir. 1993), and *Jara-Navarette v. INS*, 813 F.2d 1340 (9th Cir. 1986), indicates that failure to consider all factors or to articulate the reasons for denial constitutes an abuse of discretion. The applicant’s offense occurred over 16 years ago, and there have been no other immigration or criminal violations since then. Had the applicant not volunteered the information to the adjudication officer, the officer would not have known of the immigration violation.¹ The applicant’s family ties in the United States are stronger than those in Mexico. His father has resided in the United States for nearly his entire life; and his entire immediate family, including most of his children, is in the United States. The case *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), indicates the importance of family in the hardship determination. Citizenship and Immigration Services (CIS) relies on *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965) in denying the waiver application. However, the BIA in *Matter of Mansour* granted the waiver application, finding that a temporary two-year separation would result in extreme hardship to the spouse. The BIA concludes that returning to the home country would result in economic hardship and privation to the U.S. citizen spouse; and remaining in the United States without the companionship of her spouse would cause emotional anguish. CIS gave no consideration to the economic and social conditions in Mexico, where there is a perpetual economic crisis. According to *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), economic hardship alone may be sufficient to establish extreme hardship where there is a complete inability to find work. In *Santana-Figueroa v. INS*, 644 F. 2d. 1354 (9th Cir. 1981), the Ninth Circuit held that the inability to find work often results in the inability to treat illness, malnutrition, or starvation. It is unlikely the applicant will find work to provide for his family in Mexico. The case *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984), indicates that the complete lack of access to medical facilities in a foreign country should be considered in determining suspension of deportation. The applicant and his children are guaranteed basic health services in the United States. Healthcare in Mexico is virtually non-existent for most families because they cannot afford it. The applicant’s integration into the community should be considered in determining hardship. Conditions of health are only one factor in determining whether there is extreme hardship; other factors must be considered as well. Advanced age brings medical conditions that require treatment. The applicant’s parents are elderly and prone to ill health. His mother has diabetes and heart problems and she depends on her adult children to provide healthcare, finances, and general care. The applicant is an essential family member who provides whatever assistance is necessary.

The record contains letters from the applicant and his mother, father, sisters, and sister-in-law. In his letter, the applicant states the following. He is sorry for using his brother’s border crossing in attempting to cross the border. He and his children are used to living in the United States. He works at Atlas Construction and is able to financially support his family. His children would suffer if removed from the United States since he would not be able to support them in Mexico. He has no one in Mexico; all of his family is in the United States. His mother is not in good health and is emotionally stressed about his situation; his leaving the country will impact her health.

The letter from the applicant’s father states that the applicant will not be able to support his family if they stay in the United States without him. He states that his son has only cousins in Mexico.

¹ The record contains immigration documents from the time of the applicant’s apprehension on January 18, 1990.

The letter from the applicant's mother states the following. The applicant has five U.S. citizen children who reside in the United States. Four of the children attend school. The applicant's children have friends and participate in school activities. Her son has no family in Mexico. She has a close family and separation would cause emotional stress. She is not in good health; she has diabetes and heart problems. She is concerned about the financial hardship her son would endure in Mexico. She wants her children and grandchild to have a better life than she and her husband had.

The content of the letters from the applicant's sisters and sister-in-law is essentially the same as that of the letters of the applicant and his parents.

The Ninth Circuit 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, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, the fact that an applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The record fails to establish that the applicant's father or mother would endure extreme hardship if he or she remains in the United States without him.

No evidence in the record suggests that the applicant's salary is required to meet the monthly household expenses of his father or mother. Furthermore, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship)

and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

The record contains no evidence establishing that the applicant's mother or father suffers from serious health problems and they rely on him to assist with medical problems. The applicant's mother submitted no evidence to substantiate in any way that she has diabetes and heart problems. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant and his family members are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the submitted letters and the other evidence in the record. After careful consideration, it finds that the situation of the applicant's mother and father, if she or he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by the applicant's mother or father is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra*.

The applicant fails to establish that his mother or father would endure extreme hardship if she or he joined him in Mexico.

The AAO agrees with counsel in that the conditions in Mexico, the country where the applicant's father or mother would live if he or she joins him, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship." In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" Carrete-Michel's claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

The applicant makes a claim of economic hardship stemming from an inability to find work in Mexico. The record reflects that he is 39 years old, his father is 66 years old, and his mother is nearly 60 years old. There is no evidence in the record substantiating in any way the claim that the applicant would be unable to find work in Mexico. The U.S. State Department Country Conditions Report, Mexico 2000, referenced by counsel provides information about Mexico; but the information is not specific to the applicant's circumstances. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciembra v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985).

There is no evidence in the record establishing that the applicant's mother or father would endure financial hardship if she or he joined the applicant in Mexico.

Counsel asserts that *Matter of Correa, supra*, indicates that complete lack of access to medical facilities constitutes extreme hardship. The AAO finds that there is no evidence in the record to show that the Dominguez's will have no access to medical care in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, the BIA in *Matter of Correa* found that "second class" medical facilities in foreign countries are not per se extreme hardship.

The record does not substantiate the claim that all of the applicant's siblings reside in the United States. The applicant submitted proof that one sibling is a lawful permanent resident in the United States. No proof has been furnished of the legal status of the other siblings. For example, the applicant used the border crossing card of his brother. But no evidence has been submitted about the legal status of the brother. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant's father and mother, as a result of their concern about the well-being of the applicant's children, is a relevant consideration. The record contains birth certificates reflecting that [REDACTED]

[REDACTED], aged 20; [REDACTED], aged 11; [REDACTED] aged 5; [REDACTED], aged seven; and [REDACTED], aged 14, are U.S. citizens.

With regard to a child's education in a foreign country, in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, [REDACTED] herself admitted that [REDACTED] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute."

In light of the court's reasoning and holding in *Ramirez-Durazo v. INS* and *Banks v. INS*, the evidence of record is insufficient to establish that the disadvantage of reduced educational opportunities in Mexico would establish extreme hardship.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.