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U.S. Citizenship
and Immigration
Services

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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:



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 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 30, 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 counterfeit I-94 bearing the applicant's picture and the name [REDACTED] so as to gain entry into the United States. *Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act, Form I-867, sworn and subscribed on September 24, 1999.*

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the Seventh Circuit Court of Appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that "[a]n individual who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact." *Id.* at n.1.

Accordingly, the evidence in the record supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. By presenting to U.S. immigration officials a fraudulent document so as to gain admission to the United States, the applicant sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact.

The AAO will now address the director's finding that granting 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 her 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 relative in the present case is the applicant's husband. 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).

"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 husband must be established in the event that he joins the applicant; and in the alternative, that he 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 47 years old. She entered the United States legally on a V1 visa on September 17, 2001. She married her husband on December 17, 1990. Her husband, who became a lawful permanent resident on December 1990 and has lived in the United States since 1984, is employed with Growers Company and earns \$2,800 a month. The couple has three children and they are active in their church. Citizenship and Immigration Services (CIS) misapplied *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The hardship and equity factors in the instant case did not accumulate while the applicant was in removal proceedings as they had in *Matter of Cervantes-Gonzalez*. Unlike the facts in *Matter of Cervantes-Gonzalez*, the applicant's entire family is in the United States. In *Matter of Cervantes-Gonzalez*, the BIA relies heavily on the fact that the applicant and his wife lacked financial ties to the United States. Here, the applicant plays a vital role in her family. In court decisions such as *Mejia-Carrillo v. US*, 656 F.2d 520 (9th Cir. 1981); *Ravancho v. INS*, 658 F. 2d 169 (3rd Cir. 1981); *Salameda v. INS*, 70 F.3d 447 (7th Cir. 1995); and *Tukhowinich v. INS*, 57 F.3d 869 (9th Cir. 1985) a number of factors are considered in the hardship determination. *Matter of Cervantes-Gonzalez* conveys that country conditions are relevant in a hardship determination. If the applicant's husband moved to Mexico he would lose his current job and would not find comparable work in Mexico to sustain his family. Health issues are only one of the factors in establishing extreme hardship; other factors are close relatives in the United States or country of origin, separation from spouse or children, the ages of the people involved, length of residence and community ties in the United States, culture, language, and religious and ethnic obstacles. The applicant's husband would be cut off from medical or pension programs in Mexico. The age of the applicant's husband and the closed employment system in Mexico would make finding a job hopeless. Country conditions in Mexico are terrible and its government is corrupt. Strong community ties are present in this case.

Collectively, the letters from the applicant's husband state the following. He and his wife have been together for 22 years and have never separated. His wife is very important in his life and he would be devastated without her. They have three children. His wife had a difficult life while young. They have better opportunities in the United States. He would find it nearly impossible to find work in Mexico because of his age. His wife suffers from ailments related to her blood pressure. *Letters of applicant's husband dated August 18, 2006 and May 4, 2006.*

In her letter, the applicant states the following. She has mental anguish about her family's future. She will not earn enough in Mexico to support her family. Her husband will be emotionally destroyed without her. She had been abandoned by her parents when she was one year old, and her grandmother died when she was 12 years old. She took care of herself after her grandmother died.

Courts in the United States have 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).

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 husband would endure extreme hardship if he remained in the United States without his wife.

The record reflects that the applicant's husband earns \$2,800 a month. The record has no evidence that would show his salary as insufficient to meet monthly household expenses. In addition, 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 applicant's husband is very concerned about separation from the applicant. 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 the submitted letters and the fact that the couple has been married for more than 20 years. Nonetheless, the AAO finds that the situation of the applicant's husband, if 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 husband is unusual or beyond that which is normally to be expected upon deportation. See *Hassan and Perez, supra*.

The AAO notes that the applicant and his wife have children living in Mexico who are citizens of Mexico. It also notes that although the applicant's husband states that he has never separated from the applicant his statement is inconsistent with the information in the Biographic Information (Form G-325) and sworn statement taken at the time of her apprehension on September 24, 1999. The Form G-325 reflects that the applicant lived in Mexico from October 1997 to September 2001 while her husband lived in the United States. The sworn statement conveys that the applicant stated that she and her husband were separated for almost eight years.

It is incumbent upon the petitioner 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 submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant has failed to establish that her husband would endure extreme hardship if he joined her in Mexico.

The AAO agrees with counsel's statement, which is that the conditions in Mexico, the country where the applicant's husband would live if he joins his wife, 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's husband makes a claim of economic hardship stemming from an inability to find work in Mexico. The record reflects that he is 44 years old and his wife is 48 years of age. *Form I-130*. The information about Mexico is not persuasive in establishing that the applicant and her husband would be unable to find employment in Mexico; it is general in nature and not tailored to the specific circumstances of the applicant and her husband and their ability to find employment in Mexico. 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. *Kuciamba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985).

Although the applicant's husband indicates that the applicant suffers from ailments related to her blood pressure, there is no evidence in the record establishing that the applicant or any member of her family has a severe illness that would make removal extremely hard on the applicant's husband. 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)).

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.