

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H12

JUL 31 2007

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

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 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa or other document 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), which the District Director denied, concluding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated June 23, 2006.

On the Form I-290B, the applicant indicates that a separate brief and/or evidence will be submitted to the AAO within 90 days. The AAO did not receive a response to a fax sent to counsel on June 18, 2007, which requested a copy of the separate brief and/or evidence. The record as constituted is therefore complete.

The applicant states in the Form I-290B that the District Director did not properly consider extreme and unusual hardship to his wife; and that the notes of [REDACTED] were misunderstood and misinterpreted. He states that his wife will have difficulty obtaining employment in the same field because of the language barrier and profession, causing her extreme and unusual hardship. *Form I-290B*

The District Director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). 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 reflects that on February 9, 1994, at the Calexico, California Port of Entry, the applicant willfully and falsely told an immigration officer that he was a citizen of the United States in order to gain admission into the country. *Decision of the District Director*, dated June 23, 2006. Based on this material misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Now, the AAO will address whether a waiver of inadmissibility is 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 are not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, which in the present case is the applicant's wife. 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, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) lists the factors that 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 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

It is noted that extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant abroad, and in the alternative, that he or she remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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).

The record contains letters; information about Mexico; a projected statement of revenue of the household from [REDACTED]; an employment verification letter; wage statements; income tax records; W-2 Forms; bank statements; birth certificates; a marriage certificate; medical records;

psychological interview by Well Being Systems, P.L.C.C.; an evaluation by [REDACTED]; and other documents.

The March 21, 2006 letter from the applicant's wife states the following. She has been married 5 years to her husband, who has been in her life for 15 years. Her unborn grandchild will not have the benefit of having the applicant in his life if her husband is sent to Mexico. She depends on her husband and is very close to him; he helped her overcome alcohol dependency. Her husband drops off and picks up the children each day from school, activities, and work; he makes sure they complete their homework and house chores. They spend time together as a family. She feels over-stressed and exhausted and is depressed about her husband's situation.

The undated letter of the applicant's wife describes the family's close relationship with the applicant. The letters of the applicant's stepdaughter describe a close relationship with the applicant. The letters of friends and family members describe the good character of the applicant.

The compilation from [REDACTED] indicates the following. The applicant's and his wife's combined net wages are \$4,434.21, the present monthly expenditures are \$4,466.77. The combined net wages of the applicant and his wife are \$1,407.25 if he works in Mexico. His wife's monthly household expenditures in the United States, including costs to visit the applicant in Mexico, total \$7,037.77.

The record reflects that the applicant's stepchildren are aged 19, 15, and 14; and his children are 13, 7, and 2 years of age.

The evaluation in the record of the [REDACTED] family and the children's academic Spanish and their ability to function in a Mexican school system indicates the following. The family is very close, playing games, doing homework, and spending time together. The children rely heavily on the applicant, who they perceive as a role model and an essential part of all of their lives. All of the children are reporting symptoms related to the stress of the anticipated deportation. The actual deportation of the father will have even greater consequences on the family. [REDACTED], states that the effect of the deportation of a parent on minor children is a "form of abandonment or parental loss in the child's eyes; such loss can be characterized as a childhood trauma." There are long-term effects of trauma, particularly in children. Should the children accompany their father to Mexico they will be denied a quality education in the United States. There will be no intervention programs for children who have special needs. They will not receive the help they need to catch up with their peers. Should the children remain in the United States with their mother, they will suffer severe and far-reaching emotion and academic hardships due to the stress and grief of life without their father. To complicate matters, [REDACTED] is expecting a child and will need her parents' support to finish high school and college. All of the U.S. citizen children are designated "Non Spanish Speaker" and/or "Non Spanish Reader." With writing, [REDACTED] is considered a "Limited Spanish Writer"; the other children are "Non Spanish Writer." *Evaluation by Marilyn Sanchez and Kamaria Cunningham McClelland.*

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 psychological interview by [REDACTED] states that the applicant's wife has a history of Major Depression and Panic Disorder, which are triggered by traumatic loss. [REDACTED] states that the applicant's wife is facing the prospect of losing her husband, causing her symptoms to return. [REDACTED] states that if her husband leaves the country his wife would be extremely stressed; and her Depression and Panic Disorder would become much more severe, creating an extreme or even catastrophic hardship, if she is alone with six children who she would be unable to support.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the Major Depression and Panic Disorder order suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted psychological interview, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the psychological interview's value to a determination of extreme hardship.

With regard to the medical documents in the record, the AAO finds the content of [REDACTED] notes concerning the applicant's wife primarily relate to problems with acne. The notes of July 29, 2003 indicate that the applicant's wife is "[f]eeling depressed about her face" and that she had been prescribed antidepressants in the past, which she never took. The record does not contain any persuasive evidence establishing that the applicant's wife has been treated for Major Depression and Panic Disorder order in the past.

The record clearly reflects that the applicant's wife is very concerned about the family's separation from her husband. The AAO is thoughtful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration all of the evidence in the record. It finds that the situation of the applicant's wife, if she chooses to remain 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 wife, while separated from her husband, is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra.*

The applicant's wife is an optometry office manager. *Letter dated March 3, 2006 from [REDACTED]* [REDACTED] The W-2 Forms for 2003 reveal that she earned \$31,292 in 2003 and the applicant earned \$21,381. In 2001, the applicant's wife supported herself and four children, earning \$32,276. *Form 1040A for 2001.* The AAO finds that the applicant has not established that his wife would be unable to support the children on her salary if the applicant were removed and they remained in the United States.

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 is sufficient to establish that the applicant's wife would experience extreme hardship if she joined her husband in Mexico.

The conditions in Mexico, the country where the applicant's wife would live if she joined 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, 498 (9th Cir. 1986). "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, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)).

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by his wife, as a result of her concern about the welfare of her children, is a relevant consideration. With the case here, the applicant's wife is concerned about the education of her children if they relocated to live in Mexico.

U.S. courts have held that the consequences of deportation imposed on citizen children of school age must be considered in determining extreme hardship. For example, *In Re. Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan; she had lived her entire life in the United States and was completely integrated into an American lifestyle; and uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the Circuit Court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. And, in *Prapavat vs. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Circuit Court found the BIA abused its discretion in concluding that extreme hardship had not been shown in light of the fact that the aliens' five-year-old citizen

daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The record here establishes that the U.S. citizen children of the applicant's wife who are of school age are not academically proficient in Spanish and are completely integrated into an American lifestyle, participating in sports and other activities. Uprooting them at this stage in their education and their social development to survive in a Mexican environment would constitute extreme hardship as found in *In Re. Kao & Lin, Ramos, and Prapavat*. The AAO therefore finds that the record establishes that the concern of the applicant's wife about the consequences of deportation imposed on her school age children would result in extreme hardship to her.

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 removal.

In the final analysis, the AAO finds that the applicant has established extreme hardship to his wife in the event that the family joined him in Mexico. But he has not established extreme hardship to his wife if she remained in the United States with her children. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that a waiver of inadmissibility for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i) is not warranted.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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.