

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H12

FILE:

Office: HARLINGEN, TX

Date: JUN 21 2007

IN RE:

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Harlingen, Texas, 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 is 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 procuring a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the mother of two U.S. citizen children at the time of filing. She 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 her spouse and children.

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 March 15, 2005.

The record reflects that, on February 20, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on her behalf by her spouse, [REDACTED]. On February 20, 2003, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse. On September 13, 2004, the applicant appeared at the Citizenship and Immigration Services' (CIS) Harlingen, Texas District Office. She testified that, in 2001, she failed to disclose that she was married to a U.S. citizen when she applied for the U.S. nonimmigrant visa with which she entered the United States.

On appeal, counsel contends that separation of the family would result in extreme hardship to the applicant's spouse. *See Counsel's Brief*, dated April 14, 2005. Counsel, in support of her assertions, submits the referenced brief, affidavits from the applicant's spouse, school-records for the applicant's children, medical documentation in regard to the applicant, her spouse and her elder child, and financial documentation. 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 record, which reflects the applicant's admission that she failed to disclose her marriage to a U.S. citizen in obtaining a U.S. nonimmigrant visa in 2001. On appeal, counsel does not contest the district director's determination of inadmissibility.

A section 212(i) waiver is 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 or her children is not a permissible consideration under the statute. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen children will be considered in this decision only to the extent that it affects the applicant's spouse, the qualifying relative.

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

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 [REDACTED] is a U.S. citizen by birth. [REDACTED] parents are Mexican nationals and he was raised in Mexico. The applicant and [REDACTED] have an eight-year old daughter and a seven-year old son who are U.S. citizens by birth. Since the record indicates that the applicant was pregnant at the time she filed the appeal, the applicant and [REDACTED] may also have a one-year old child who is a U.S. citizen. The applicant and [REDACTED] are in their 30's.

On appeal, counsel asserts that separation of the family will result in extreme hardship because the applicant is the heart of the family and a rock for [REDACTED]. Counsel asserts that [REDACTED] depends on the applicant for support, love and for the care of his children, finances and their home. Counsel asserts that the applicant's family is a very close and loving young family who will suffer in the absence of the applicant. Counsel asserts that [REDACTED] life revolves around the applicant and his children. Counsel asserts that the situation has caused [REDACTED] tremendous emotional distress and that he has been taking medication for depression and stress. Counsel asserts that the thought that his family could be separated is unbearable for [REDACTED] and it is inevitable that he will suffer if his family is torn apart. Counsel asserts that [REDACTED] is faced with the decision to send his children to Mexico with their mother or to keep them in the United States, providing childcare for them at an age when they are still in need of the tender care of their mother. Counsel asserts that, if the children remain in the United States, he will be faced with coping with responsibilities at work and at home. Counsel asserts that [REDACTED] eldest child is under the care of a doctor for allergies and will continue to receive weekly hyposensitization for one to five years. Counsel asserts that [REDACTED] would have to be absent from work during this time, which would create a greater burden upon him. Counsel asserts that removal of the applicant will also impose an extreme financial burden upon [REDACTED] because he would have to continue to maintain his household in the United States, as well as a household in Mexico for the applicant.

[REDACTED], in his affidavits, states that if the applicant is removed from the United States it will cause pain and disruption to his family. He states that the children will suffer not having their mother. He states that she is the only person upon whom he can depend and is his nurse, teacher, friend and lover. He states that the applicant always cares for the children because he works nine hours per day. He states that he would be unable to take his daughter to her weekly doctor's appointments due to work commitments and she would suffer without her treatment with sinus problems and coughing. He states that he would not feel comfortable leaving his children with someone other than their mother. He states that if the children accompanied the applicant to Mexico he would fear for their safety due to the crime rate. He states that he would be unable to financially support two households at the same time. He states that the situation has led him to see a doctor for depression and stress and that he now takes medication to calm himself and to get to sleep.

A brief medical letter states that [REDACTED] eldest child has been seen by a doctor for nasal congestion, nasal obstruction, snoring and cough. The medical letter states that she was screened for allergies and will be on weekly hyposensitization for environmental allergies for one to five years. The medical letter does not indicate that the treatment could not continue without the presence of the applicant or that the applicant's presence is essential to the child's treatment. The medical letter does not indicate that the child would be unable to receive appropriate treatment if she were to accompany the applicant to Mexico. While the AAO acknowledges that if the applicant is removed [REDACTED] would have to find an alternate source of

transportation to get his daughter to her the medical appointments, there is no evidence that this constitutes a hardship beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] mother also lives in Pharr, Texas and may be able to assist him physically and emotionally in the absence of the applicant.

In support of [REDACTED] claim that he has sought medical help for the depression created by the possibility of the applicant's removal, the record contains an April 4, 2005 letter from [REDACTED] in Reynosa, State of Tamulipas, Mexico. [REDACTED] states that [REDACTED] has been under his care for depression since October 2004 and is taking tafil and lexapro. However, while [REDACTED] confirms that [REDACTED] is depressed, he fails to identify the basis of [REDACTED] depression or the symptoms for which he has prescribed medication. [REDACTED] letter also offers no discussion regarding the effect of [REDACTED]' depression on his daily activities and no prognosis regarding his emotional health. In that [REDACTED]' statement does not provide the type of detailed medical/psychological analysis that normally results from an established relationship between a patient and a health care professional, its value to a determination of extreme emotional hardship is significantly diminished and it will be given little evidentiary weight.

While [REDACTED] asserts that he would fear for the safety of his wife and children in Mexico due to the crime rate, there is no documentation in the record that establishes the level of crime in Mexico or that it would affect [REDACTED]' wife and children. While the AAO acknowledges that [REDACTED] would experience distress and depression as a result of separation from his spouse and the separation of his children from their mother or father, the record, as just noted, contains insufficient evidence to establish that his emotions would be any different than those commonly experienced by aliens and families upon removal. Additionally, the record reflects that [REDACTED] mother also lives in Pharr, Texas and may be able to support him emotionally in the absence of the applicant.

[REDACTED] also contends that the applicant's removal would require him to support two households and that he is not financially able to do so. However, the record does not establish that [REDACTED] would be unable to support himself and his children on the \$26, 219 that the record indicates he earned in 2004. Although it is unfortunate that [REDACTED] may essentially become a single parent and have the added expense of paying for childcare, this is also not a hardship that is beyond those commonly faced by aliens and families upon removal. Moreover, there is no evidence in the record that indicates that the applicant would be unable to find employment in Mexico that could ease [REDACTED] financial obligations. The record also reflects that the applicant has family members in Mexico, such as her parents, who may be able to assist her financially, thus again reducing [REDACTED] financial obligations. Accordingly, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself and his children, even when combined with the emotional hardship described above.

On appeal, counsel asserts that it would be devastating to [REDACTED] to accompany the applicant to Mexico because relocation to Mexico and beginning a new life there would wipe out all his efforts to create better opportunities for himself and his family in the United States. [REDACTED]' affidavits do not describe any hardships that he might suffer if he were to accompany the applicant to Mexico. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980). The AAO is, therefore, unable to

find that [REDACTED] would experience hardship should he choose to join the applicant in Mexico. Additionally, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he 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 would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse 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 has 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). 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(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.