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**U.S. Citizenship
and Immigration
Services**

H2

FILE:

Office: PHOENIX, AZ

Date: MAR 12 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, 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 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the mother of two U.S. citizen children. 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 May 25, 2005.

The record reflects that, on April 5, 1992, the applicant applied for admission at the San Luis, Arizona Port of Entry. The applicant presented a U.S. Birth Certificate belonging to her sister under the name [REDACTED] [REDACTED]” The applicant was denied admission and was permitted to return voluntarily to Mexico. On May 3, 2000, the applicant married her naturalized U.S. citizen spouse, [REDACTED]. On April 21, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed on her behalf by [REDACTED]. On January 7, 2004, the applicant appeared at the Phoenix, Arizona District Office. She testified that, in 1992, she had attempted to enter the United States and that, upon inspection of her purse, immigration inspectors discovered her U.S. citizen sister’s Birth Certificate, which her sister had placed in her purse. She testified that she never presented her sister’s U.S. Birth Certificate to the immigration inspectors or claimed to be a U.S. citizen. However, in a sworn statement, executed by the applicant on September 28, 1992, the applicant testified that she had taken her sister’s U.S. Birth Certificate to the San Luis, Arizona Port of Entry in order to enter the United States and, when she was detained at the Port of Entry, immigration inspectors did not believe that the U.S. Birth Certificate belonged to her. She testified that, only after the immigration inspectors failed to believe that the U.S. Birth Certificate belonged to her, did the immigration inspectors search her purse and locate her expired amnesty card. On April 28, 2005, 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 family members.

On appeal, counsel contends that the applicant’s spouse would suffer extreme hardship and the district director erred in failing to consider all the factors cumulatively. *See Form I-290B*, dated June 16, 2005. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within the time allotted. On December 18, 2006, the AAO informed counsel that she had five days in which to resubmit any documentation she had previously provided in support of the appeal. At no time did counsel forward a brief and/or additional evidence. Accordingly, the record is complete. 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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit 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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of a U.S. birth certificate belonging to another to attempt to procure admission into

the United States in 1992. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. 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. 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 not be considered in this decision, except as it may affect the applicant's spouse, the only 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 native of Mexico who became a naturalized U.S. citizen in 1986. The applicant and [REDACTED] do not have any children together. [REDACTED] has three adult children from a previous relationship who are all U.S. citizens by birth. The applicant has a 16-year old son and a 12-year old daughter from a previous relationship who are both U.S. citizens by birth. The record indicates that the applicant is in her 40's, [REDACTED] is in his 50's. There is no evidence in the record that [REDACTED] has any health concerns.

Counsel, at the time of filing, contended that the most important factor in determining extreme hardship is separation from family. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), The Ninth Circuit Court of Appeals (the Ninth Circuit) held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of deportation to constitute “extreme hardship.”

[REDACTED], in his affidavit, asserts that even though he works, he is dependent on the applicant emotionally and economically. He states that she is the one who cares for him and their home. He states that he will suffer tremendously if the applicant is separated from him and he needs his wife for support and guidance. He states that she is his partner and friend, with whom he shares his sadness, happiness and his inner fears. He states that he cannot make a decision without the applicant’s opinion and lies awake at night thinking of what will happen if she is ordered removed and loses his motivation and desire to continue living. He states that he is afraid for his well being, morally and physically if the applicant were to be removed. He states that he thinks of his children and what they will suffer.

Financial records indicate that, in 2002, [REDACTED] earned approximately \$54,795. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While the AAO acknowledges that [REDACTED] may have to lower the family’s standard of living, the record does not contain any evidence to suggest that [REDACTED] would be unable to support himself and the applicant’s children without the financial support of the applicant. Further, although it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] and the applicant’s children if [REDACTED] had to support himself and the applicant’s children without additional income from the applicant, even when combined with the emotional hardship described below. The AAO notes that counsel, at the time of filing, contended that the applicant’s return to Mexico would subject [REDACTED] to “considerable economic hardship,” including the loss of their home. The record, however, provides no proof in support of counsel’s claims. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the applicant’s burden of proof in these proceedings. The statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

There is no evidence in the record to suggest that [REDACTED] or the applicant's children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges [REDACTED] may be concerned that the applicant's children will essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, while it is unfortunate that [REDACTED] and the applicant's children would experience distress and some level of depression as a result of their separation from the applicant, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. Finally, the record indicates that [REDACTED] has family members, such as his parents, adult siblings and adult children, in the United States who may be able to assist him financially, physically and emotionally in the absence of the applicant.

[REDACTED] in his affidavit, states that all of his family resides in the United States, he does not have anyone left in Mexico and leaving the United States would ruin his life because all of his family resides here and he is extremely close with his siblings. He states that in Mexico there is very little opportunity and there would be no method of survival for his family there. He states that he could not provide for his wife and family, as he has been able to do in the United States. Counsel, at the time of filing, asserted that the applicant and Mr. [REDACTED] fear returning to Mexico because of its appalling social, economic and political condition and its high crime rate. Although counsel indicated she was submitting documentation to support her claim that [REDACTED] would be in real danger if he relocated to Mexico, the record contains no such evidence.

Having analyzed the hardships that [REDACTED] and counsel claim he will suffer if he were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record that establishes that the applicant and [REDACTED] would be unable to obtain *any* employment in Mexico. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. There is no evidence in the record to suggest that [REDACTED] or the applicant's children suffer from a mental or physical illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the hardships that would be faced by [REDACTED] upon relocation to Mexico--adjusting to the culture, country, economy, environment, separation from his children, friends and family and an the inability to pursue opportunities that are available in the United States--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Neither does the record establish that [REDACTED] would be at risk if he were to follow the applicant to Mexico. Finally, as previously noted, [REDACTED] 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 no greater hardship than 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. § 1186(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.