



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

H2

FILE: [REDACTED] Office: DENVER Date: MAR 12 2007

IN RE: [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 District Director, Denver, Colorado, 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 immigration benefits under the Act by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the stepmother of four 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 stepchildren.

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 February 10, 2005.

The record reflects that, on April 26, 2001, the applicant filed an Application for Temporary Protected Status (Form I-821), indicating that she was a native and citizen of El Salvador. The applicant also submitted a fraudulent El Salvadoran birth certificate to support her claim to citizenship in El Salvador. On August 30, 2001, the Form I-821 was denied. On March 30, 2004, 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 by her spouse. On March 30, 2004, 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 October 22, 2004, the applicant appeared at the Citizenship and Immigration Services' (CIS) Denver, Colorado, District Office. The applicant testified that she had attempted to obtain temporary protected status by filing the Form I-821 and submitting a fraudulent birth certificate. She also testified that she later decided not to pursue the application and allowed the application to be denied by failing to respond to a request for further evidence.

On appeal, counsel contends that the district director's failed to consider all of the presented evidence that clearly establishes that the applicant's spouse would suffer extreme hardship. *See Applicant's Brief*, dated April 7, 2005. In support of her contentions, counsel submitted the referenced brief, an updated affidavit from the applicant's spouse, financial documentation, country conditions reports and letters of support. 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 reflecting the applicant's attempt to obtain immigration benefits under the Act by fraud in 2001. On appeal, counsel argues that the applicant's failure to prosecute the Form I-821 is constructive withdrawal of the Form I-821 and therefore also a constructive and timely withdrawal of the applicant's attempt to obtain immigration benefits under the Act by fraud. The AAO finds counsel's arguments to be unpersuasive. In analyzing whether a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, the Department of State notes that "in general, it (retraction) should be made at the first opportunity . . . if the misrepresentation has been noted in a "mail-order" application, the applicant must be called in for an interview and the retraction must be made during the course thereof." *DOS Foreign Affairs Manual*, § 40.63 N4.6. Although the AAO is not bound by the Foreign Affairs Manual, it finds its' analysis in these situations to be persuasive. In the present case, while the applicant was not called in for an interview, on June 29, 2001, CIS issued a request for further evidence to the applicant in regard to the Form I-821. CIS requested evidence from the applicant that included a current national photo identification card, passport, birth certificate with photo identification or another photo identification issued by the government of El Salvador. The applicant responded to this request by submitting documentation that included a United States identification card, issued on July 17, 2001, listing her place of birth as El Salvador. Only after the applicant failed to provide a photo identification card issued by the El Salvadoran government was the Form I-821 denied. At the first opportunity she was given to retract her misrepresentation, the applicant did not withdraw her application or retract her misrepresentation that she was a citizen of El Salvador. Rather, the applicant reaffirmed the misrepresentation that she was a citizen of El Salvador by presenting a U.S. identification card representing her place of birth as El Salvador. The AAO, therefore, finds that the applicant did not make a timely retraction of her misrepresentation.

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 spouse'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).

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, on June 11, 2003, the applicant married her spouse, [REDACTED]. [REDACTED] is a native of El Salvador who became a lawful permanent resident in 1985 and a naturalized U.S. citizen in 1997. The applicant and [REDACTED] do not have any children together. Mr. [REDACTED] has a 16-year old son and a 15-year old son from a prior relationship who are both U.S. citizens by birth. The record reflects that these two children reside with their biological mother in New York and Mr. [REDACTED] provides them with \$474.00 per month in court-ordered child support. [REDACTED] also has a ten-year old son and an eight-year old daughter from a prior marriage who are both U.S. citizens by birth. The record reflects that these two children reside with their biological mother in Denver, Colorado, and the applicant provides them with \$330.00 per month in child support. The record indicates that the applicant and [REDACTED] are in their 30's and [REDACTED] may have some health concerns.

On appeal, counsel asserts that [REDACTED] will suffer extreme hardship if the applicant is denied a waiver application because he and the applicant have a deep marriage bond due to the fact that she has helped him to recover from the betrayal of his ex-wife with his own brother and their relationship is important to his emotional health. [REDACTED] in his affidavits, asserts that if the applicant is not allowed to remain in the United States he will suffer extreme hardship because it has been very hard for him to recover from the humiliation and betrayal he experienced when his ex-wife cheated on him with his own brother. He states that, two days a week, the applicant provides daycare to his two children who live in Denver, Colorado, while both he and his ex-wife are at work. Finally, he states that he works two jobs in order to meet child-support payments and to support him and the applicant.

Financial records indicate that, in 2002 and 2003, [REDACTED] earned approximately \$31,365 and \$24,353, respectively, from one job. The record shows that, even without assistance from the applicant or having to work a second job, [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>. [REDACTED] describes in his affidavit the amount of child support he pays on a monthly basis for his four children. Even when these child support payments are deducted from [REDACTED]'s yearly income, he has approximately

\$14,705 per year with which to cover his household's expenses and any additional money he may wish to provide to his children, which, in and of itself more than meets poverty guidelines for the family. While it is unfortunate that, if the applicant is removed from the United States, the two children in Denver, Colorado, may require additional care for two days out of the week and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While [REDACTED] may have to lower his standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Mr. [REDACTED] if he had to support his family without additional income from the applicant, even when combined with the emotional hardship described below.

On appeal, counsel states that [REDACTED]'s relationship with the applicant is important to his emotional health. [REDACTED], in his affidavits, asserts that he was humiliated by his wife's betrayal and that it was difficult for him to heal. He states that the applicant has supported him in "the good and the bad times." However, [REDACTED] does not contend nor does the record establish that he any ongoing emotional health issues or that he has ever sought medical assistance for any emotional problems stemming from the end of his first marriage. Accordingly, there is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal.

Counsel asserts that [REDACTED] would suffer extreme hardship if he accompanied the applicant to Mexico because [REDACTED] would be separated from his two younger children, with whom he has almost daily contact. Counsel asserts that [REDACTED], a former citizen of El Salvador, has no family ties to Mexico and all but one of his immediate family members resides in the United States. Counsel asserts that [REDACTED] and the applicant would have difficulty in obtaining employment because of the economy and would certainly not earn sufficient income in order to provide comparable child support to his children in the United States. Counsel asserts that [REDACTED] will suffer the emotional toll of knowing he is unable to provide his children with the financial and emotional support to which they are accustomed. Counsel asserts that Mr. [REDACTED] would have to have to adjust to a culture and country about which he knows nothing. Mr. [REDACTED] in his affidavits, states he has skills as a line cook in high-end establishments, which are sought after in the United States, but which are not sought after in an impoverished country like Mexico. He specifically states that there are no five-star hotels in Monterrey, Mexico, the city from which his wife originates, to which he could make an application for employment. He states that he does not know anyone in Mexico and would be separated from his children and family members in the United States. He states that, if he were able to find employment in Mexico, he would be unable to financially support his children in the United States.

Having analyzed the hardships [REDACTED] and his 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 to suggest that the applicant and [REDACTED] would be unable to obtain *any* employment in Mexico. The record reflects that, prior to traveling to the United States, the applicant was employed as an x-ray technician in Mexico. Furthermore, there is no requirement that [REDACTED] and the applicant reside in Monterrey, Mexico. As such, the applicant and [REDACTED] could reside in a resort town that has the high-end establishments that could employ [REDACTED]'s unique talents. 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)*. While the applicant is legally required to pay \$474 per month in child support there is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to earn sufficient income in Mexico to meet those child support payments. There is no evidence in the record to suggest that [REDACTED] or his 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 faced by [REDACTED] with regard to him adjusting to a new culture, country, economy, environment, separation from his children, friends and family are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country.

Counsel also asserts that [REDACTED] would suffer extreme hardship if he were to take the applicant to El Salvador because [REDACTED] would be separated from his two younger children, with whom he has almost daily contact. Counsel asserts that, while [REDACTED]'s father still resides in El Salvador, all of his immediate family members reside in the United States and he has been estranged from his father for a substantial number of years. Counsel asserts that [REDACTED] and the applicant would have difficulty in obtaining employment because of the economy and would certainly not earn sufficient income in order to provide comparable child support to his children in the United States. Counsel assert that [REDACTED] will suffer the emotional toll of knowing he is unable to provide his children with the financial and emotional support to which they are accustomed. Counsel asserts that [REDACTED] and the applicant intend to have children in the future and their ability to raise their own child in El Salvador would be severely limited given the economic, health and educational conditions there. Counsel asserts that [REDACTED] would have to readjust to a culture and country in which he has not resided for over half his life. Finally, counsel asserts that, as an El Salvadoran returning from the United States, he would be targeted by criminal elements in El Salvador because they will perceive him as having money. [REDACTED] in his affidavits, states he has skills as a line cook in high-end establishments, which are sought after in the United States, but which are not sought after in an impoverished country like El Salvador. He states that he does not know anyone in El Salvador, except his estranged father, and would be separated from his children and family members in the United States. He states that, if he were able to find employment in El Salvador, he would be unable to financially support his children in the United States.

As discussed above, there is no evidence that [REDACTED] or his children suffer from a physical or mental illness that would cause [REDACTED] to suffer emotional hardship beyond that commonly suffered by aliens and families upon removal. There is no evidence in the record that the applicant and [REDACTED] would be unable to obtain *any* employment in El Salvador. While the hardships faced by [REDACTED] with regard to readjusting to the culture, country, economy, environment, separation from his children, friends and family and the lack of health care comparable to that available in the United States are what would normally be expected with any spouse accompanying a removed alien to a foreign country. The AAO notes counsel's statements regarding criminal elements targeting El Salvadorans returning from the United States. It finds that, when combined with the other factors just noted, [REDACTED]'s increased risk as a target of crime in El Salvador establishes that he could experience extreme hardship should he take the applicant there. However, the AAO finds that, as the spouse of a Mexican citizen, the applicant's spouse is not required to reside in El Salvador as a result of denial of the applicant's waiver request and, as discussed above, Mr. [REDACTED] would not experience extreme hardship if he accompanied the applicant to Mexico. Finally, the AAO finds that, as a U.S. citizen, 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 refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties that arise 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.