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U.S. Citizenship
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MAY 04 2007

FILE: [REDACTED] Office: PHOENIX, AZ

Date:

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

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 waiver application was denied by the Acting 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 willfully misrepresenting a material fact, namely, falsely claiming U.S. citizenship so as to procure admission into the United States. The applicant, who seeks a waiver of inadmissibility, has a spouse and mother who are lawful permanent residents.

The acting district director stated that immigration records reflect that on July 8, 1994 the applicant attempted to enter the United States by claiming to be an American citizen. On the basis of the false claim of U.S. citizenship, he concluded that she was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i); and further concluded that the applicant failed to establish that she warranted a grant of waiver of inadmissibility provided under section 212(i) of the Act, 8 U.S.C. § 1182(i). *Decision of the Acting District Director*, dated August 23, 2005.

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 chapter 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 chapter . . . is inadmissible.

....

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 . . .

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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, eligibility to apply for a waiver.

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 applicant's false claim to U.S. citizenship, which occurred prior to September 30, 1996, was made to a government official of the United States so as to procure admission into the United States. Thus, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and eligible to apply for a 212(i) waiver.

On appeal, counsel makes the following statements. The applicant has been living in the United States since 1994, having first entered without inspection in 1990. She and the petitioner have two American-born children, a daughter born on March 14, 1995, and a son born on April 2, 2000. The family contributes financially to their church, helps at church activities, and attends bible school. The family owns its home. Mr. works full-time as a forklift operator and the family has a combined income of \$36,000 per year. The evaluation by Dr. indicates that Mr. suffers from depression, is worried about his family's future, and fears for his wife's safety in Mexico. The applicant's mother is extremely ill and in constant need of care and the applicant drives to Tucson twice a week to care for her and tend to medical appointments. The applicant's mother is worried about who will care for her if the applicant leaves the country. There is no precedential case discussing inadmissibility under section 212(a)(9)(B) and no guidance as to its application.¹ Citizenship and Immigration Service (CIS) relies on the wrong cases and applies a more heightened "extreme hardship" standard; it cites hardship factors in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as precedent, and fails to cite *Matter of KAO-LIN*, 23 I&N Dec. 45

¹ Inadmissibility under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), is not relevant here. The Acting District Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

(BIA 2001) and use the hardship factors in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). CIS failed to consider separation to the applicant's mother who has poor health and suffers from cancer. The applicant, who has no useful skills and is considered an aging employee, cannot support her children to Mexico. Her husband would remain in the United States because he would be unable to find work in Mexico and support his family. The separation of the family would not be by choice. In determining hardship, CIS failed to consider how the children impact their father, as indicated in *Matter of Recinas*,² and the totality of the hardship factors. The hardship analysis in the context of inadmissibility is different from that of suspension of deportation. Supreme Court decisions show that Mr. [REDACTED] has a fundamental substantive and procedural due process right to make decisions about his family's life, live in family unity, and remain in the United States without unwarranted governmental interference. *Counsel's Brief in Support of the Appeal*.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. If extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Hardship factors include those described in *Matter of Cervantes-Gonzalez* and *Matter of Anderson*. However, the factors listed in *Matter of Anderson* that are not relevant here are those that establish hardship to the applicant or the applicant's children. Section 212(i) of the Act.

The *Matter of Cervantes-Gonzalez* hardship 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.

In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) states that 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. *Id.* at 565.

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).

² Counsel fails to provide a citation for *Matter of Recinas*; the AAO is therefore unable to analyze it and give proper consideration to counsel's argument.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's husband and children. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in the alternative, that he or she 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. The qualifying relatives here are the applicant's husband and mother.

indicates that Mr. is a full-time employee, earning \$11.75 per hour. *Letter, dated August 30, 2005, from* states that Ms. is a full-time meat packer, earning \$8.00 per hour. *Letter, dated May 18, 2005, from* Sun indicates that Mr. is a full-time forklift operator there, earning \$9.40 per hour. *Letter, dated May 18, 2005, from*

The assessment by Dr. a clinical psychologist, states the following. Mr. suffers from depression and anxiety, which is exacerbated by the immigration situation. His fear of separating from his wife causes stress, anxiety, and depression. His prognosis can be positive as long as he can deal with the immigration issues and control his symptoms. He has problems with sleep, anxiety, sadness, depression, concentration, and eating. Dr. states that Mr. indicated that he was diagnosed with diabetes type 2 and is careful about taking medication and eating properly.

The record contains letters from friends, relatives, and school personnel; a deed of trust; birth certificates; wage statements; photographs; school records; medical records and letters; a marriage certificate; an insurance policy; information about Mexico; income tax records; and other materials.

The letter, dated June 24, 2005, from M.D., relating to the applicant's mother, Mrs. indicates that she has been a patient since 1998. He states that his patient is 72 years old and suffers from severe depression accompanied by excessive anxiety. He indicates that she has a history of chronic hypertension, uncontrollable diabetes, and has been diagnosed with breast cancer. He states that she needs family support for emotional support.

The medical records of Mrs. show that on August 23, 2004, she underwent a right breast modified radical mastectomy with sentinel node biopsy, revealing a negative sentinel node. The medical doctor indicated that her prognosis is good. - Tucson, AZ, recorded by M.D. The September 20, 2004 letter from M.D. indicates that Mrs. is at some risk of recurrence and that she has stage II (T2, N0, M0) breast cancer. There is ample evidence in the record to establish that Mrs. has routine follow-up examinations every two months for diabetes.

The June 15, 2005 letter from P.C. indicates that the applicant has been a patient there since 1995. It states that her husband has chronic health conditions including diabetes, hypertension, and hyperlipidemia.

The U.S. Department of State report discusses political, social, and economic conditions in Mexico.

The AAO finds that the record as constituted does not establish that the applicant's mother and husband would endure extreme hardship if they remain in the United States without the applicant. Counsel claims that the applicant's affidavit indicates that she drives from Tolleson to Tucson³ twice a week to care for her mother and take her to medical appointments. *Counsel's Brief in Support of the Appeal*. Counsel states that the applicant buys her mother's groceries and ensures that she takes her medication. *Counsel's Brief Submitted in Support of the Applicant for Waiver of Excludability*. After a careful review of the record, the AAO finds that it does not contain any evidence, such as affidavit from the applicant or her mother, indicating that Mrs. [REDACTED] relies on her daughter for care. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The letter from Dr. [REDACTED], M.D., stating that Mrs. [REDACTED] suffers from severe depression accompanied by excessive anxiety, indicates that Dr. [REDACTED] practices family medicine. No evidence in the record establishes his qualifications to diagnosis Mrs. [REDACTED]'s mental health. Accordingly, the weight of Dr. [REDACTED]'s statements, as to Mrs. [REDACTED]'s mental health, is diminished.

The applicant's husband indicates that worrying about separation from his spouse has caused him to feel stress, anxiety, and depression; and he submits an assessment from a clinical psychologist to establish his emotional state. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment 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 generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The record indicates that the applicant's earnings comprise forty percent of the family income. Although she contributes a significant portion to the household income, U.S. courts 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) (citations omitted).

The June 15, 2005 letter from [REDACTED] indicates that the applicant's husband has chronic health conditions including diabetes, hypertension, and hyperlipidemia. The record contains prescriptions for her husband from [REDACTED]. While the applicant raises her husband's medical problems to support the claim of hardship, the physician's letter is simply inadequate to establish medical hardship. There

³ The distance of Tolleson, Arizona, to Tucson, Arizona, is 130 miles.

is no indication how serious the problems may be or what treatment is necessary, if indeed the problems are treatable. Furthermore, the [REDACTED], letter indicates that Ms. [REDACTED] is a patient there; it does not make the same statement as to Mr. [REDACTED] however.

Mr. [REDACTED] is concerned about family separation. U. S. courts 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).

Nonetheless, the fact that the applicant has American-born 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.

With the case here, the separation of the applicant from her husband, children, and mother is not sufficient to categorize the hardship as extreme as it is a common result of deportation and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.

The AAO finds that the record fails to establish that the applicant’s husband and mother would suffer extreme hardship if they joined her in Mexico.

The conditions of Mexico, the country to which the Barrios family will join the applicant, 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).

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 and not having proper medical care benefits do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). “Second class” medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). 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.”

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” [REDACTED] 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.”

In the case at hand, counsel makes a claim of economic hardship stemming from the family’s inability to find work in Mexico. Counsel also states that the applicant’s mother has resided in the United States for 10 years and would be unable to pay for her medication in Mexico. The AAO finds that the U.S. Department of State report describes the generalized political, social, and economic conditions in Mexico; but does not relate to the specific employment circumstances of the applicant and her husband and their ability to support her mother. **The assertions of counsel do not constitute evidence.** *Matter of Obaighena, supra; Matter of Ramirez-Sanchez, supra*. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

No evidence has been submitted to show that the applicant’s mother would be unable to receive adequate treatment for diabetes and cancer in Mexico and that she would be unable to afford medical care. The AAO finds that the medical records do not clearly indicate that she is at high risk of developing long-term complications such as retinopathy, nephropathy, neuropathy, and cardiopathy, as asserted by counsel. The assertions of counsel do not constitute evidence. *Matter of Obaighena, supra; Matter of Ramirez-Sanchez, supra*. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Counsel states that the applicant’s husband would not have health insurance in Mexico, which he presently has in the United States. Not having proper medical care benefits does not reach the level of extreme hardship, however. See, *Carnalla-Munoz, supra*; and *Marques-Medina, supra*.

The Barrios family includes a twelve-year-old daughter and a seven-year-old son. In *Ramirez-Durazo, supra* at 498, the Ninth Circuit stated that “[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish “extreme hardship.” It also stated that “[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute “extreme hardship.” In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that “[w]hile changing schools and the language of instruction will admittedly be difficult, Banks herself admitted that Diana would be able to learn the German language. The

possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute.”

There is no evidence in the record suggesting that the [REDACTED] children will not be able to transition to life in Mexico or would have difficulties transitioning into Mexican schools.

Counsel states that Mr. [REDACTED] would sever ties with family members if he joined the applicant in Mexico. He has two U.S. citizen and a legal permanent resident sibling in the United States, and his mother is a U.S. citizen. All of his siblings reside in Arizona; he has no ties in Mexico. *Counsel's Brief Submitted in Support of the Applicant for Waiver of Excludability*. This is not persuasive in establishing extreme hardship as the BIA in *Matter of Shaughnessy*, 12 I & N Dec. 810, 813 (BIA 1968) stated that separation from family does not constitute extreme hardship unless combined with more extreme impact. Furthermore, there is no evidence in the record supporting counsel's statements regarding Mr. [REDACTED] family members. The assertions of counsel do not constitute evidence. *Matter of Obaighena, supra; Matter of Ramirez-Sanchez, supra*. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Counsel argues that Mr. [REDACTED] has a fundamental substantive and procedural due process right to make decisions about his family's life, live in family unity, and remain in the United States without unwarranted governmental interference. He states that there are Supreme Court decisions ruling on the protection of the rights of families: *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)(parents have a substantive due process right to the custody and companionship of their own children); *Meyer v. Nebraska*, 262 U.S. 390 (1923)(the right to marry, establish a home and bring up children is a central part of the liberty protected by the Due Process Clause); *Moore v. City of East Cleveland Ohio*, 431 U.S. 499 (1977) (fundamental constitutional rights to freedom of choice in matters of marriage and family life and constitutional protection of the sanctity of the family extends beyond the nuclear family to the extended family . . .).

The AAO finds counsel's argument, which focuses on the rights of family, is not persuasive. Courts have found that an applicant is subject to inadmissibility for reasons wholly unrelated to marriage to an American citizen. *See, e.g. Manwani v. U.S. Dept. of Justice, I.N.S.*, 736 F. Supp. 1367, 1380 (W.D.N.C. 1990), citing *Burrafato v. United States Department of State*, 523 F.2d 554, 555 (2d Cir.1975) ("application denied on the ground that [alien] was ineligible for admission under Section 212(a) [8 U.S.C. § 1182(a)]"); *Ansong v. District Director*, 596 F.Supp. 882, 888-89 (D.Me.1984) (deportation of alien "in spite of anticipated adverse effect" on marriage where alien is "otherwise subject to lawful deportation.... [and] where independent cause for such deportation exists...") (emphasis added); *Silverman v. Rogers*, 437 F.2d 102, 107 (1st Cir.1970) (alien required to depart despite marriage because she had agreed to foreign residency requirement as a condition to obtaining J-1 student visa); *Swartz v. Rogers*, 254 F.2d 338 (D.C.Cir.1958) (alien required to depart despite marriage because of narcotics conviction); and *Friedburger v. Schultz*, 616 F.Supp. 1315, 1316 (E.D.Pa.1985) (alien required to depart despite engagement because he had agreed to foreign residency requirement as a condition of obtaining J-1 student visa).

Burrafato and related cases conclude that marriage does not automatically "trump" provisions of the Act that render an alien ineligible for admission. *Manwani v. U.S. Dept. of Justice, I.N.S., supra* at 1380. The applicant here is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii).

The fact that she is married to a U.S. citizen and has American-born children does not establish a constitutional right for her to remain in the country, as conveyed by *Burrafato* and related cases. An alien cannot claim a constitutional right to remain in this country because of the existence of a marital relationship with a citizen. *Ansong v. District Director, supra* at 888.

A case on point is *Swartz v. Rogers, supra* at 339, in which the appellants argued that the due process clause gave the appellant wife “a right, upon marriage, to establish a home, create a family, have the society and devotion of her husband, etc.; and that to deport her husband by the retrospective application of a statute would unconstitutionally destroy that marital status.” In affirming the judgment of the District Court which was adverse to plaintiffs, the district court found that:

[T]he essence of appellants' claim, when it is analyzed, is a right to live in this country. Certainly deportation would put burdens upon the marriage. It would impose upon the wife the choice of living abroad with her husband or living in this country without him. But deportation would not in any way destroy the legal union which the marriage created. The physical conditions of the marriage may change, but the marriage continues. Under these circumstances we think the wife has no constitutional right which is violated by the deportation of her husband.

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 deportation 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). The additional factors needed to combine with economic detriment in order to categorize the hardship as extreme are unfortunately missing in this case.

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(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is dismissed. The waiver application is denied.