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U.S. Citizenship  
and Immigration  
Services

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tlr

[REDACTED]

FILE:

Office: HARLINGEN DISTRICT OFFICE

Date: NOV 20 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Harlingen, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and the son of lawful permanent residents of the United States, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife and parents.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse or parents, the qualifying relatives, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, the applicant contends that his wife and parents would suffer extreme hardship if he were required to return to Mexico, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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.

Section 212(i) of the Act provides that:

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant made a false claim to United States citizenship on January 12, 1994, and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He does not dispute his inadmissibility. Rather, he is filing for a waiver of his inadmissibility.

The record contains several references to the hardship that the applicant's children would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife

and parents are the only qualifying relatives, and hardship to the applicant or his children cannot be considered, except as it may affect the applicant's wife or parents.

Thus, the first issue to be addressed is whether the applicant's return to Mexico would impose extreme hardship on his wife or parents, the qualifying family members. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

Court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for 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. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 United States 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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

The record reflects that the applicant's wife is a thirty-six-year-old citizen of the United States. She has been a citizen since 1999. She and the applicant have been married since July 6, 2004. The applicant's mother is a seventy-eight-year-old lawful permanent resident of the United States; she has been a permanent resident since 2002. The applicant's father is an eighty-year-old lawful permanent resident of the United States; he has also been a permanent resident since 2002. The applicant has five children from previous relationships.

In her October 2005 affidavit, the applicant's wife states that her life would be miserable without the applicant; that she is afraid and depressed at the prospect of the applicant's return to Mexico; that she and the applicant are very much in love and hope to start a family soon; that she and the applicant care for her elderly and ailing parents; that the applicant is all she has; that the applicant is hard-working; that they

have bought land and plan to build a home once the loan for the land is paid; and that the applicant would be unable to obtain meaningful employment in Mexico at his age (45).

In their April 19, 2006 joint affidavit, the applicant's mother and father state that the applicant provides them with their daily living expenses; that they have no source of income beyond the applicant; and that, since they do not drive, the applicant takes them to their medical appointments. In two letters dated April 18, 2006, [REDACTED] states that the applicant's parents are his patients, and that the applicant and the applicant's brother pay for their medical expenses.

Two of the applicant's sons submit letters attesting to their great love and admiration for the applicant, and two letters of reference from family friends attest to the applicant's good moral character and hard-working nature.

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.

In the instant case, the applicant is required to demonstrate his wife or parents would face extreme hardship in the event the applicant is required to return to Mexico, regardless of whether his wife or parents accompany him to Mexico or remain in the United States.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

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 wife or parents will face extreme hardship if the applicant returns to Mexico. If they remain in the United States while the applicant relocates to Mexico, the record demonstrates that they would face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or adult son is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship they would face would be greater than that normally be expected upon separation. The record contains no documentary evidence to verify the claims made regarding the applicant's parents' medical condition, that they require his assistance to manage their daily affairs, or that they would be unable to obtain financial assistance from other relatives in the applicant's absence.<sup>1</sup> Going on record without supporting documentary evidence is not sufficient for purposes 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)). Nor has the applicant established why his wife's parents, who live in the United States, would be unable to assist his wife and daughter in his absence.

Nor does the evidence of record does support the claim that the applicant's wife and parents would face any difficulty beyond the normal process of cultural readjustment if they were to accompany the applicant to Mexico. Such adjustment is common and would be normally experienced by individuals in the applicant's wife's and parent's situation. The record contains no evidence to establish that they would experience hardship beyond that normally expected in this situation. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158 at 165.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 finds that the director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's wife and parents would suffer hardship beyond that normally expected upon the removal of a spouse or adult son.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife and permanent resident parents would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse or adult son. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme

<sup>1</sup> The AAO notes that [REDACTED] letter states that the applicant's parents' medical bills are paid both by the applicant and the applicant's brother, which undercuts the claims of the applicant's parents that they are reliant upon the applicant alone.

hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

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