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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, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of Nicaragua who is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and father of two U.S. citizen sons. He 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 his spouse and son.

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 November 30, 2004.

The record reflects that, on October 1, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On April 11, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified and provided documentation establishing that in September 1995, he entered the United States by presenting a Nicaraguan passport and U.S. nonimmigrant visa bearing the name "Misael Mendoza." On December 3, 2001, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his spouse and children.

On appeal, counsel contends that the district director failed to define "extreme hardship" for section 212(i) waivers and abused her discretion in denying the waiver application. Counsel contends that additional evidence is submitted on appeal in regard to the applicant's son's medical condition that supports a finding of extreme hardship to the applicant's spouse. *See Counsel's Brief*, dated April 21, 2005. In support of her contentions, counsel submits the referenced brief, updated affidavits from the applicant and her spouse, medical documentation for the applicant's eldest son, medical information sheets, school records for the applicant's eldest son, internet information on volcanoes in Nicaragua, immigration documentation for the applicant's spouse's family members and copies of documentation previously provided. 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 applicant's testimony and documentation establishing the applicant's entry into the United States by fraud in 1995. On appeal, counsel does not contest the district director's determination of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences is not considered in section 212(i) waiver proceedings. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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 he or she 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, on July 6, 1996, the applicant married his spouse, [REDACTED]. [REDACTED] is a native of Nicaragua who became a lawful permanent resident in 2001 and a naturalized U.S. citizen in 2007. The applicant and [REDACTED] have a ten-year old son and a five-year old son who are both U.S. citizens by birth. The record indicates that the applicant and [REDACTED] are in their 30's.

On appeal, counsel asserts that the district director did not indicate in her decision the legal analysis used to conclude that the applicant's wife would not suffer extreme hardship because she failed to cite to case law from either the Board of Immigration Appeals (BIA) or the Ninth Circuit Court of Appeals (Ninth Circuit). Specifically, counsel asserts that the district director erred by failing to cite to *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), or any other case law that sets forth the factors to be considered in an "extreme hardship" analysis. The AAO finds that, although the district director did not cite *Matter of Kao and Lin*, she did cite numerous cases from the BIA that set forth different factors that are considered in establishing "extreme hardship." The district director's analysis clearly states that 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). The AAO finds that the district director appropriately applied the standard of "extreme hardship" as set forth by the statute and precedent decisions interpreting what constitutes "extreme hardship" with the evidence that was before her.

On appeal, counsel asserts that the district director failed to make a careful and individualized decision and that the denial is void of any rational explanation or indication that the decision was based on substantial evidence. Counsel asserts that the district director failed to refer to any of the supporting documents submitted by the applicant in concluding that the waiver application should be denied. However, the AAO finds, as stated above, that the district director cited case law holding that the common results of removal are insufficient to prove extreme hardship. Moreover, the district director set forth the hardships that the applicant's wife claimed she would suffer according to the documentation submitted with the Form I-601, including citing to the applicant's spouse's affidavit, and stated that the specific hardships claimed did not meet the standard of "extreme hardship."

Counsel, on appeal, asserts that [REDACTED] will suffer hardship due to her eldest son's [REDACTED] medical condition. Counsel asserts that [REDACTED] was initially diagnosed with asthma in 1999 and his condition has progressively become worse. Counsel asserts that [REDACTED] is prescribed cromolyn and albuterol twice per day and limits his physical activities to avoid triggering an asthma attack. Counsel asserts that there have been numerous occasions when [REDACTED] attacks have required him to be taken to the emergency room. Counsel asserts that [REDACTED] is allergic to dust, weather changes and pollen. Counsel asserts that [REDACTED] is enrolled in English as a Second Language (ESL) classes and the applicant continues to be the sole provider for the family.

██████████ in her declarations, states that she is very concerned about ██████████ asthma attacks, especially since they have become more frequent. She states that once ██████████, her youngest son, starts school, in 2006, she plans to start working. She states that she is attending ESL classes in college and plans to improve her English skills and take business classes. She states that her sons and she need the applicant. She states that she cannot imagine a happy world without the applicant and that, together, they have accomplished their goal of purchasing a home and filling their home with a family and joy. She states that the applicant has always been there for her financially, emotionally and psychologically. She states that she does not know if she would be able to survive emotionally and financially without him in the United States. She states that she would have to take on one or two extra jobs just to be able to pay for the family's expenses such as their mortgage, homeowners insurance, car insurance and car payment. She states that these added responsibilities would mean she would be unable to spend as much quality time with her children. She states that she knows her children would become depressed without the applicant. She states that just thinking about the applicant's possible removal has her so worried that it has had a physical and emotional affect on her. She states that she has become increasingly sad and anxious and has experienced frequent episodes of headaches and body aches. She states that she does not want to and cannot afford to become a single-mother.

Medical documentation indicates that ██████████ has been diagnosed with asthma and that most of his visits to the primary care physician are either for medical refills or childhood fevers, ear infections and coughing. The medical documentation indicates that ██████████ last emergency room visit occurred on October 21, 2004, at which time he exhibited only a very slight wheeze. The medical documentation indicates that a previous emergency room visit, on February 11, 2003, was for a sore throat. The AAO notes that the medical documentation submitted by counsel consists of hand-written physician's notes. While the medical documentation indicates that ██████████ is prescribed medications for his asthma, the documentation does not indicate whether he requires long-term medical care, what the prognosis is for his condition, that his treatment requires the presence of the applicant and/or he would be unable to receive appropriate medical treatment in the absence of the applicant or that there is an increase in severity or frequency of symptoms. There is no evidence in the record to establish that ██████████ suffers from any physical or mental illness or that her children suffer from a physical or mental illness that would cause ██████████ to suffer hardship beyond that commonly suffered by aliens and families upon removal. Although the AAO notes ██████████ claim to have suffered physical and emotional effects in regard to the thought of the applicant's removal, the record provides no evidence to support her statement.

While the AAO notes that ██████████ would essentially become a single parent if she and her children were to remain in the United States without the applicant, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, while it is unfortunate that ██████████ would experience distress and some level of depression as a result of her separation from the applicant and the separation of her children from their father, the record does not demonstrate that their emotional reactions are different than those normally experienced when families are separated by removal. Furthermore, the record indicates that ██████████ has family members in the United States, such as her siblings, who may be able to assist her emotionally and physically in the applicant's absence.

While the AAO notes that ██████████ may have to lower her standard of living, the record does not contain any evidence to suggest that she would be unable to support herself and the children without the financial

support of the applicant. Additionally, the record indicates that [REDACTED] has family members in the United States, such as her siblings, who may be able to assist her financially and physically in the absence of the applicant. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and the children without additional income from the applicant, even when combined with the emotional hardship described above.

Counsel, on appeal, asserts that, if [REDACTED] and her sons accompanied the applicant to Nicaragua, [REDACTED] worries that [REDACTED] asthma would become worse due to the fact that her hometown, Leon, has an active volcano which spews ashes into the air which can exacerbate [REDACTED] asthma. Counsel asserts that [REDACTED] will suffer in seeing [REDACTED] asthma condition exacerbated by the volcanic activity in Leon. Counsel asserts that [REDACTED] has five siblings and their family members who reside in the United States.

[REDACTED], in her declarations, states that she fears for [REDACTED]'s health in Nicaragua because his asthma would be worse in Leon where the volcanic ash would be harmful and further complicate his asthma. She states that she and the applicant have established a life for their family in the United States, while in Nicaragua they do not have a place to which to return and would have to start their lives again. She states that she shares a close relationship with her family in the United States and depends on them for emotional support. She states that she would have difficulty finding gainful employment in Nicaragua because she has limited skills that are not in demand in Nicaragua. She states that the economy in Nicaragua is bad and the unemployment rate is extremely high. She states that she has become accustomed to the benefits and opportunities available to her in the United States. She states that she would be forced to return to a country in which she virtually has no relatives. She states that her family is in the United States and she has worked hard to maintain meaningful and enduring friendships in the United States. She states that she wants her children to have all the opportunities and benefits offered to them as U.S. citizens. She states that in Nicaragua her children would not have the same quality of resources and that the medical facilities and benefits are substandard.

There is no evidence in the record to establish that the applicant and [REDACTED] would be unable to obtain any employment in Nicaragua. 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*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). Additionally, the record reflects that the applicant has family members in Nicaragua, such as his parents, who may be able to assist the family physically and financially. While the hardships that would be faced by [REDACTED] in relocating to Nicaragua--adjusting to the economy, environment, separation from friends and family, and her and her children's inability to obtain the same opportunities and benefits they would receive in the United States--are what would normally be expected with any spouse accompanying a removed alien to a foreign country, when combined with [REDACTED] medical condition and the environmental conditions in Nicaragua that would exacerbate his condition they would rise to level of extreme hardship. *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001). However, the AAO notes that, as previously noted, [REDACTED] as a U.S. citizen, 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, she would not experience extreme hardship if she 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] would face the unfortunate, but expected disruptions 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*, *Supra*; *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 his 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 he merits a waiver as a matter of discretion.

In proceedings for an 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. The application is denied.