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Date: **AUG 05 2008**

IN RE:

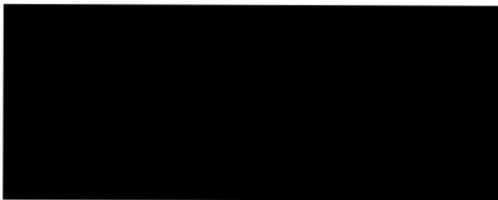
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director of Citizenship and Immigration Services, New York, New York, 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 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 admission into the United States by fraud or willful misrepresentation. The applicant's spouse, [REDACTED], is a lawful permanent resident of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated March 19, 2007. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record reflects that in April 1998 the applicant was expeditiously removed from the United States for attempting to enter as a pedestrian in San Ysidro, California, by presenting to an immigration inspector an I-551 (Resident Alien Card) in the name of [REDACTED]. In the denial letter, the director noted that the applicant failed to indicate in the adjustment application that she had previously been removed from the United States and that she had presented fraudulent documents to an immigration official.

Counsel on appeal asserts that the director erred in denying the waiver application because the director failed to consider the applicant's admission under oath, which is that she attempted to enter the United States using another person's green card. Counsel asserts that the applicant did not know that the adjustment application did not indicate she had committed fraud in attempting to enter the United States.

The AAO finds that regardless of whether or not [REDACTED] knowingly failed to indicate her removal in the adjustment application, the director was correct in finding her inadmissible under section 212(a)(6)(C) of the Act for misrepresenting her identity in April 1998 so as to gain admission into the United States.

A waiver for fraud and material misrepresentation is under section 212(i) of the Act, which states that:

- (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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

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).

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains, among other documents, birth certificates, affidavits, a psychological evaluation, a marriage certificate, and income tax records.

On appeal, counsel states that the director erred in not considering all of the factors indicated in the affidavit, such as [REDACTED]'s not being able to work or function without the presence of his wife and his dependence on her. Counsel states that [REDACTED] Form I-212 application was approved, which required establishing extreme hardship to her husband.

The evaluation of the applicant's husband by [REDACTED] conveyed that the applicant's husband has lived in the United States for approximately 23 years, that he owns his own landscaping business, and that he has three U.S. citizen children who are 12, 11, and 7 years old and a 14-year-old daughter who was born in Mexico. [REDACTED] stated that [REDACTED] is concerned about separation from his wife, who [REDACTED] stated that he depends upon for moral support and to care for the children while he is at work. According to [REDACTED] indicated that it would be impossible to have the children with him if his wife were in Mexico because he could not be both mother and family breadwinner. [REDACTED] stated that [REDACTED] indicated that he felt depression and despair when he was separated from his wife, because she was barred from the United States in 2004, and his children stayed with her because he was unable to care for them. [REDACTED] indicated that [REDACTED] stated that his education is limited, having barely completing the third grade. [REDACTED] conveyed that family is very important to [REDACTED] and that [REDACTED] socio-economic functioning and psychological well-being would decrease markedly if separated from his wife. *Psychological Evaluation of Mr. [REDACTED] Ph.D., J.D., dated March 28, 2007.*

The affidavits by [REDACTED] which were sworn on March 14, 2007 and February 6, 2004, are similar in content to [REDACTED]'s evaluation.

In her affidavit, which was sworn on April 9, 2007, [REDACTED] indicated that she has a close relationship with her husband and children and that her husband would collapse, become depressed, and not have a normal life if she and their children were not with him in the United States.

The income tax records for 2006 show adjusted gross income of \$27,991 for the [REDACTED] household.

The February 20, 2007 letter by [REDACTED] conveyed that the applicant and her family rent the first floor of a house on First Street, paying \$900 in rent each month.

The AAO finds that the record establishes extreme hardship to the applicant's spouse if he remained in the United States without the applicant.

The AAO finds that the income tax records establish that the applicant's husband, who has a landscaping business, would not earn a sufficient income to support his four children if they remained with him in the United States. To sponsor an immigrant, an individual is subject to the 125 percent of the Department of Health and Human Services Poverty Guidelines requirement, which for a family of five was \$31,000 for 2008 and was \$29,250 in 2006. Thus, the applicant's husband's adjusted gross income of \$27,991 in 2006 would not be enough to support his family and afford childcare services if his wife were removed from the United States. Consequently, the applicant established extreme hardship if he were to remain in the United States without his wife.

The record is insufficient to establish that the applicant's husband would experience extreme hardship if he were to join his wife to live in Mexico.

The conditions in the country where the applicant's qualifying relative would live if he or she joined 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).

makes no claim of being unable to find employment in Mexico. indicated that he owns a house in Calisco, Mexico; however, he stated that his wife and children lived a threadbare existence there for seven months without much extended family assistance. *Psychological Evaluation of* by Ph.D., J.D., dated March 28, 2007. He conveyed that his children responded poorly to living in Mexico. *Id.*

With regard to a lower standard of living in the alien's native country, courts have held that a lower standard of living in the alien's native country is not in itself sufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (a "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to establish extreme hardship); *Bueno-Carrillo v. Landon*, 682 F.2d 143 (7th Cir. 1982) ("We do not believe that Congress intended the immigration courts to suspend the deportation of all those who will be unable to maintain the standard of living at home which they have managed to achieve in this country."); *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) ("It is not unusual for deported aliens to be unable to maintain the standard of living in their home country that they have managed to achieve in the United States.")

Although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, is a relevant consideration. However, 's statement that his children responded poorly to living in Mexico is not in itself sufficient to establish extreme hardship to .

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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met to establish 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 section 212(i) of the Act.

With regard to counsel's statement about the similarity of the requirements of the Form I-212 Application for Permission to Reapply for Admission After Removal (Form I-212) and I-601 waivers of inadmissibility, the AAO notes that the Form I-212 is a separate and independent application from the I-601 waiver of inadmissibility, and the requirements of the Form I-212, as set forth in section 212(a)(9)(A)(iii) of the Act,

differ from those of a waiver inadmissibility under section 212(i) of the Act in particular in that there is no requirement to establish extreme hardship to a qualifying family member.

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 remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.