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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE:

Office: LOS ANGELES, CA

Date: DEC 04 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and 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 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident 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 her U.S. lawful permanent resident spouse and three U.S. citizen children.

On February 6, 2006, the district director issued a decision denying the Application for Waiver of Grounds of Excludability (Form I-601), concluding that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative should she be removed from the United States.

The applicant filed a Form I-290B, Notice of Appeal, on March 6, 2006. The applicant asserts on appeal that her children and husband would suffer extreme hardship upon her removal. In support of her assertion, the applicant submitted a number of statements and declarations along with her Form I-290B. The applicant indicated on Form I-290B that a brief would be filed within thirty days of the appeal. However, the record shows that no brief or further evidence has been submitted since the appeal was filed. As such, the AAO will evaluate the appeal based on the record as presently constituted.

The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that on December 30, 1995, the applicant attempted to enter the United States at the San Ysidro, California port of entry with a resident alien card belonging to another person. As she had committed fraud in attempting to enter the United States under an assumed identity, the director correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Once extreme hardship to a qualifying relative 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 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 applicant 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.

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).

U. S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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 indicates that the applicant filed Form I-601 on January 26, 2006. On the Form I-601, the applicant indicated that she is claiming eligibility for a waiver through her husband, [REDACTED] who is a lawful permanent resident in the United States. The applicant also listed on the Form I-601 three U.S. citizen children and submitted copies of the children's birth certificates issued in the State of California. The birth certificates for [REDACTED] born April 22, 2001, and [REDACTED] born November 6, 1998, name [REDACTED] as the father. The record also contains a Form I-485, Application to Register Permanent Resident or

Adjust Status, supplemented by a Form G-325A, Biographic Information, filed by the applicant on May 4, 2005 in connection with a Form I-140, Immigrant Petition for an Alien Worker. It is noted that on both of these forms, the applicant stated "none" in the spaces where the name of the applicant's spouse is to be disclosed. The record contains no document showing that the applicant and [REDACTED] are legally married.

On appeal, the applicant submitted statements and declarations, all dated between February 21, 2006 and March 2, 2006, from: [REDACTED], the applicant's eldest son; [REDACTED], the applicant's sister; [REDACTED] and [REDACTED], all friends, colleagues or neighbors of the applicant; and [REDACTED], the deacon of the applicant's church. The applicant also provided a copy of a death certificate showing that her father died in Mexico on December 20, 1995.

Initially, it is noted that the director erroneously stated in her decision that "in order to qualify for the benefit sought, extreme hardship to your citizen/lawful permanent resident spouse, parent *or child* must be demonstrated [emphasis added]." As previously noted, a section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act requires a showing of extreme hardship to the citizen or lawful resident *spouse or parent* of the applicant. The applicant's children are not "qualifying relatives" for purposes of this waiver. Accordingly, the director's reference to "child" in the above statement, as well as the ensuing analysis of extreme hardship to the applicant's children in the director's decision, are hereby withdrawn.

Since the record indicates that neither of the applicant's parents is a citizen or legal permanent resident of the United States, the issue here is whether it has been established that [REDACTED] is a qualifying relative who would suffer extreme hardship upon the applicant's removal from the United States.

The AAO finds that the record is insufficient to establish that [REDACTED] is the applicant's legal spouse, as the applicant claimed. While the birth certificates of two of the applicant's children identify [REDACTED] as the father, the record does not contain a marriage certificate or any other document evidencing that the applicant and [REDACTED] are legally married. 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)). In addition, the applicant's indications on her Forms I-485 and G-325A that she does not have a spouse are inconsistent with her claim in connection with this waiver application that [REDACTED] is her husband. This discrepancy is not addressed anywhere in the record. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). In light of these deficiencies in the record, the AAO cannot conclude that [REDACTED] is the applicant's husband and therefore a qualifying relative.

Even assuming that [REDACTED] is the applicant's legal spouse as claimed, the record does not support the conclusion that he would experience extreme hardship as the result of separation from the applicant. Prior to the director's decision, the applicant submitted no evidence to demonstrate extreme hardship to a qualifying relative. Among the statements and declarations submitted on appeal, all but [REDACTED] declaration relate solely to hardship to the applicant's children upon separation from their mother, rather than to hardship that [REDACTED] might suffer upon separation from the applicant. In his own declaration, [REDACTED] stated that he works long hours and without his wife, he would be unable to cook, care for the house, or care for his children. He further states that he "would suffer extreme sadness," and that his "children's mental health and well being would be

irreparable." The AAO recognizes that the applicant's minor children would suffer considerable hardship if separated from their mother. However, as previously noted, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under Section 212(a)(6)(c) of the Act. Further, the evidence of record is not sufficient to demonstrate that hardship to the children would result in extreme hardship to the applicant's husband, as required in connection with this waiver.

The AAO recognizes that [REDACTED] will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. [REDACTED] does not mention the possibility of moving to Mexico with the applicant to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there is a deep level of affection and a certain amount of emotional and social interdependence. While 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of inadmissibility 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).

A review of the documentation in the record fails to establish that the applicant's inadmissibility to the United States would cause extreme hardship to a qualifying relative of the applicant. 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(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.