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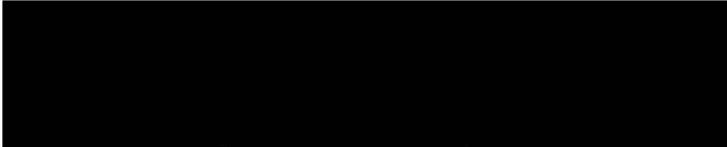
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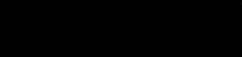
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*Hr*



FILE:



Office: SAN FRANCISCO, CA

Date: **MAY 12 2008**

IN RE:



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



SELF-REPRESENTED

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 District Director, San Francisco, 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 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the spouse of a naturalized citizen and the daughter of a lawful permanent resident mother and United States citizen father, sought a waiver of inadmissibility, which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated September 16, 2004.*

The AAO will first address the finding of inadmissibility.

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. Here, the record reflects that the applicant's false claim to U.S. citizenship was made before an immigration inspector on January 18, 1996, which was prior to September 30, 1996; the applicant is therefore eligible to apply for a Form I-601 waiver.

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. Hardship to an applicant and his or her child is 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 are the applicant's husband and parents. 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).

"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 qualifying relative must be established in the event that the qualifying relative joins the applicant, and in the alternative, that the qualifying relative remains in the United States without the applicant. 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 declarations, letters, medical records, a healthcare card by Great-West Healthcare, a verification of pregnancy form, photographs, marriage and birth certificates, permanent resident cards, a list

of the family members of the applicant's parents and a list of those of her husband, a family court judgment and order dated September 19, 2002, employment letters, a grant deed, a loan statement, information about Mexico, income tax records, W-2 Forms, wage statements, and other documents.

In his declaration the applicant's husband conveys that he has resided in the United States for over 14 years; that he is 36 years old, lives with his wife, two children, and in-laws; and is responsible for the care of his two U.S. citizen children from a prior relationship. He states that he has a close relationship with the applicant and she helped him during his back injury in 2000. He states that he is seeing a chiropractor for lower back pain, and that he can no longer do heavy work and has transitioned from construction to driving. He indicates that his wife helps out financially and it is their combined income that pays the mortgage and expenses. He states that he starts work at 3 P.M. or 8 P.M. and his wife cares for the children while he is at work, and that his children should have a united family.

The applicant's husband states that it would be difficult for him to relocate to Mexico. He states that his children would be deprived of their relationship with his family members, for nearly all of them are in the United States, with most living a few blocks from his house. He states that he and his wife would not be able to afford medical care in Mexico, that he would not find comparable employment to what he now has as a truck driver, and that they would not have a four-bedroom house, which they now have. The applicant's husband states that his children would have a better education and chance at life in the United States. He indicates that Guadalupe del Cobre is a small town in Mexico with a primary school, with the nearest secondary school 30 minutes away by car. He states that his ability to work in the United States would be impacted by his concern about his wife if she lived alone in Mexico, especially during her pregnancy.

The State of California, Division of Workers' Compensation, Primary Treating Physician's Permanent and Stationary Report (PR-3), which is dated April 3, 2001, indicates that the applicant's husband injured his back by lifting half of a pig from a shopping cart. The report provides the following diagnoses of the workplace injury sustained on August 25, 2000: lumbar IVD (722.52), lumbar radiculitis (724.4), chronic lumbar sprain/strain (847.2), and chronic myalgia (729.1). The report conveys that the applicant is precluded from performing heavy work and it states that he lost approximately one half of his pre-injury capacity for bending, stooping, lifting, pushing, pulling, and climbing, and other activities involving comparable physical effort. The report states that the applicant cannot lift over 30 pounds or have prolonged weight bearing and that he will require chiropractic therapy and medication or physical therapy for pain. The report indicates that the applicant cannot return to his regular work duties and is a candidate for vocational rehabilitation.

The letter dated November 3, 2004 by \_\_\_\_\_ with \_\_\_\_\_ conveys that the applicant's husband was diagnosed with \_\_\_\_\_ degeneration of lumbar intervertebral disc (722.52), thoracic subluxation (739.2), lumbar subluxation (739.3), and lumbalgia (724.2).

The employment letter dated September 30, 2004 by \_\_\_\_\_ with West Coast Transport states that the applicant's husband has been a full-time driver since June 5, 2004.

The employment letter dated July 2, 2002 by \_\_\_\_\_ with \_\_\_\_\_ Ripon California conveys that the applicant's annual salary is \$50,000 and that he averages 14 hours per day.

The applicant's stepchildren were born in 1995 and 1996 and her children were born in 1996 and 2001. The record conveys that the applicant was pregnant in 2004.

The Judgment and Order by the family court, which dated September 19, 2002, reflects that the applicant's husband is required to pay child support for his 11-year-old son and 12-year-old daughter in the amount of \$825.00, and that he has arrears in the amount of \$20,889.

The grant deed shows the applicant's husband owns real estate in Modesto, California. The World Savings mortgage loan statement indicates various payment options.

In his declaration, the applicant's father states that he is sixty-one years old and lives with his wife and the applicant and her family. He states that his children, who are 26 and 21 years old, live in the United States; his children, who are 8, 14, and 15 years old, live in Mexico and are in the process of immigrating to the United States. He indicates that he has a brother who lives in the United States and that he has little contact with another brother who lives in Mexico. The applicant's father states that he has a close relationship with the applicant, who provides him with emotional support and takes him to medical appointments and does his cooking, laundry, cleaning, and budgeting. He indicates that he cannot live with his other daughter or son in the United States, and that the applicant operates a business from her house. He states that relocation to Mexico would be difficult for him, given his age and health, and that he would be unable to financially support his wife and children there. He states that it would hurt him if his grandchildren were separated from their mother or father or if they lived in Mexico. He conveys that he would worry about his daughter in Mexico, as she has not seen his brother in nine years and would not have anyone close by; she would not have medical care nearby, even though she is six months pregnant; she would have little opportunity to earn a decent living; the small town where his brother lives has no running water, electricity, or telephone; and his wife's relatives would not be able to help the applicant.

The October 1, 2004 letter by [REDACTED] PAC, conveys that this is the first time that he met the applicant's father, who complained of having periodic joint pain, mostly in the right finger joint, for about one year.

The record reflects that the applicant's father filed immigrant visa petitions for his three children who live in Mexico.

The record contains letters from family members and friends which commend the applicant's character and indicate that the applicant's family would experience hardship if she were to move to Mexico. The letter by Delia Ruvalcaba indicates that the applicant's husband is a driver, that he works more than 10 to 12 hours a day, and that he may drive to a city more than 200 miles from home.

The record contains articles about Mexico's economic, social, human rights, and political issues. The article entitled "24 Millionaires, 40 million Poor," conveys that two-thirds of the labor force subsists on incomes less than three times the minimum wage. It states that according to Ibero-American University researchers, malnutrition affects about 40 percent of the population (38 million people).

On appeal, counsel states that the applicant's husband and parents would experience extreme hardship if the applicant lived in Mexico. Counsel states that the effect of separation on the applicant's husband would be the loss of the comfort and security offered by his wife; and the applicant's parents, who live with the applicant and her family, would lose their close relationship with the applicant and her family. Counsel states that except for one sibling, all of the siblings and the parents of the applicant's husband, as well as his aunts, uncles, and cousins live in the United States. Counsel conveys that the applicant helps pay the mortgage, provides care for her children and father, and since the back injury, helps her husband. Counsel states that the applicant has no other means of legalizing her status in the United States and that her father would be devastated if she were to return to Mexico while her other siblings are coming to live in the United States. Counsel states that if the applicant's husband were to remain in the United States without his wife and children, he would not be able to support them or keep the house, and the applicant's parents would have to find a new place to live.

Counsel states that the relatives and in-laws of the applicant's father who live in Mexico would be unable to provide permanent support to the applicant's parents and children. Counsel states that in Mexico the applicant's parents would live in poor conditions and would not be able to find employment or have medical care. He states that the applicant's husband worries about employment opportunities in Mexico, about not having health insurance there, and about his children's education and opportunities. Counsel states that the doctor to patient ratio in Mexico ranges from one doctor to every thousand inhabitants and that the diet of 50 percent of the population is below the World Health Organization's minimum daily caloric intake standards. Counsel asserts that in Mexico the applicant's husband would not receive medical attention when he has back pain because he would not have health insurance. He states that the applicant's father would also not have easy access to a doctor or medication and would not have medical insurance. He states that in Mexico over 40 million Mexicans live in poverty, two-thirds of the labor force live on an income less than three times the minimum wage, and employers openly discriminate.

The present record establishes that the applicant's husband would endure extreme hardship if he were to join the applicant to live in Mexico.

The conditions in the country where the applicant's husband would live if he joins his wife 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).

The AAO finds that the hardship to the applicant's husband, particularly in view of his 14 years of residence in the United States, the court-ordered child support, his health problem and its impact on his employability, the adverse effect of moving from this country on his and the applicant's U.S. citizen children, and separation from his family members in the United States, rises to the level of "extreme" hardship if he joins the applicant in Mexico.

Because the AAO found that the applicant's husband would experience extreme hardship if he were to join the applicant to live in Mexico, it need not consider whether the applicant's father or mother would experience extreme hardship if he or she were to join the applicant to live in Mexico.

The record fails to establish that the applicant's husband would experience extreme hardship if he were to remain in the United States without the applicant.

The submitted documentation is not sufficient to establish that the applicant's husband would not be able to meet monthly household expenses, including the mortgage, without the applicant's income. The record reflects that the applicant's husband earned \$50,000 in 2002, but it contains no documentation of the applicant's income, even though it is claimed that she financially contributes to the household. Without the applicant's income and a complete list of the family's household expenses, along with supporting documentation, the AAO cannot determine whether her income is needed to support the [REDACTED] family. 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)).

With regard to family separation, courts in the United States 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).

However, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), "it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship." In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is 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. Thus, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt, and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is concerned about separation from his wife and her separation from their children. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he remains in the United States without her, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shoostary, Perez, Sullivan, supra.*

The applicant fails to demonstrate that she is needed to provide care to her husband on account of his back injury as the record shows that the applicant's husband is gainfully employed full-time as a driver.

The record fails to establish that the applicant's father or mother would experience extreme hardship if he or she were to remain in the United States without the applicant.

Although the applicant's father conveys that he has arthritis and requires the applicant's care, the letter by [REDACTED], indicates that the applicant's father does not have severe arthritic problems that would require the presence of his daughter for daily assistance; his periodic joint pain is primarily in the right finger joint. Moreover, the record reflects that the applicant's father is able to work as a truck driver. 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)).

No documentation in the record establishes that the applicant's father or mother would experience extreme financial hardship if he or she remained in the United States without the applicant.

The applicant's father states that he has a close relationship with the applicant. In *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981) the court held that separation of parents from alien son is not extreme hardship where other sons are available to provide assistance. Here, the record does not reflect that the applicant is needed to provide daily care to her father. Furthermore, it shows that the applicant's father has other adult children, besides the applicant, who live in California.

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 so as to warrant a finding of extreme hardship in the event that the applicant's husband, father, or mother were to remain in the United States without her. 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(i) of the Act, 8 U.S.C. § 1182(i).

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) 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.