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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **MAY 12 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.

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 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 attempting to procure admission to the United States by fraud. The applicant is the spouse of a naturalized U.S. citizen and the mother of one lawful permanent resident adult son and one naturalized U.S. citizen adult daughter. She 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 her spouse and children.

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 January 26, 2007.

The record reflects that, on December 21, 1993, the applicant's spouse, [REDACTED], filed a Petition for Alien Relative (Form I-130) on her behalf, which was approved on January 28, 1994. On August 3, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On March 3, 2001, the applicant appeared at the San Ysidro, California, Port of Entry. The applicant presented a counterfeit Form I-551, Lawful Permanent Resident Card, under the name [REDACTED]. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by fraud. The applicant testified that, prior to her 2001 departure from the United States she had resided in the United States for a period of 8 years. On March 4, 2001, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225(b)(1). On June 6, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. On August 27, 2001, the applicant's Form I-485 was terminated. On April 18, 2006, the applicant filed a second Form I-485 based on the approved Form I-130. On July 11, 2006, the applicant appeared at CIS' Los Angeles, California District Office. The applicant testified that she had reentered the United States without inspection or admission in March 2001. On November 17, 2006, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse and children.

On appeal, counsel contends that the district director failed to fully consider the extreme hardship that the applicant's spouse will suffer if the applicant is denied admission to the United States. *See Counsel's Brief*, dated February 7, 2007. In support of her contentions, counsel submits the referenced brief 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 212(a)(6)(C)(i) of the Act on documentation, including the sworn testimony of the applicant, establishing that the applicant attempted to obtain admission to the United States by fraud in 2001. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen and lawful permanent resident 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. 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 the denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer

extreme hardship whether he or she remains in the United States or accompanies the applicant to the foreign country of residence.

In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute “extreme hardship.”

Should extreme hardship be 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 May 26, 1970, the applicant married [REDACTED] in Mexico. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1997. The applicant and [REDACTED] have a 33-year old son, a native and citizen of Mexico, who became a lawful permanent resident in 2000. The applicant and [REDACTED] have a 27-year old daughter, a native of Mexico, who became a lawful permanent resident in 2000 and a naturalized U.S. citizen in 2007. While the applicant and [REDACTED] indicate that they have a 36-year old son and a 29-year old son who have lawful status in the United States, the record does not support this claim. The applicant and [REDACTED] are in their 50's.

On appeal, counsel asserts that the district director failed to consider the psychological evaluation and the length of the applicant's and [REDACTED]'s relationship in determining extreme hardship. Counsel asserts that [REDACTED] suffers from borderline diabetes and his health condition will be exacerbated by the applicant's departure from the United States. Counsel asserts that the district director failed to give proper weight to the applicant's and her children's declarations in establishing extreme hardship to [REDACTED]. Counsel, in the letter accompanying the Form I-601, asserts that [REDACTED]'s extreme hardship is detailed in his declaration. Counsel asserts that [REDACTED]'s everyday life and well-being will be dramatically affected if the applicant is forced to return to Mexico.

[REDACTED] in his declaration, states that when he first came to the United States and was separated from the applicant it was extremely difficult and the heartache that he suffered is something he does not wish to relive. He states that since the applicant joined him in the United States he has never been separated from her. He states that the applicant is an excellent wife who helps him in any way that she can, caring for the household and being a great mother and excellent grandmother. He states that his family is extremely tight-knit and they enjoy a deep connection that cannot be replaced. He states that he has been diagnosed with diabetes and has to take medicine to control his blood sugar levels. He states that the applicant cooks special meals for him to

help maintain his blood sugar levels. He states that without the applicant he knows he will be unable to care for himself in this way and his health will suffer. He states that the doctor informed him that he should avoid all types of stress because of his diabetes and that the stress, anxiety and loneliness he will suffer if the applicant returns to Mexico will seriously endanger his health. He states that his wife recently had knee surgery, which was paid for by his medical insurance, and that she needs to remain in the United States to continue to receive treatment, as she will probably need further surgery. He states that he knows that, in Mexico, the applicant will not have the quality of medical care she has received in the United States and that will cause him further suffering and anxiety.

The applicant, in her declaration, states that she was able to have knee surgery through [REDACTED]'s health insurance. She states that [REDACTED] was recently diagnosed with borderline diabetes and his condition could take a turn for the worse if he does not eat a proper diet, or has too much stress in his life. She states that she is the one who watches what he eats and she fears he will be unable to care for himself.

[REDACTED]'s lawful permanent resident son and U.S. citizen daughter, in their declarations, state that the applicant's return to Mexico will affect them greatly due to their significant relationships with their mother.

A psychological evaluation, dated October 23, 2006, and prepared by [REDACTED] Ph.D., a clinical psychologist, states that [REDACTED] is in generally good health and does not currently take any prescribed medication. It states that [REDACTED] informed the interviewing psychologist that he had been told at his last check up that he had "borderline diabetes." It states that [REDACTED] informed the interviewing psychologist that the applicant had knee surgery on both knees due to arthritis and walks with a cane at times. It states that Mr. [REDACTED]'s insurance covered the surgery, the applicant may need further surgery and she is currently prescribed an anti-inflammatory medication. It states that [REDACTED] reported that his present anxieties and concerns arose when the applicant visited her gravely ill mother in Mexico and he has expressed anxiety and concern about a possible separation from the applicant. It states that [REDACTED] and the applicant have never been apart since they both arrived in the United States and have always had a good marriage. It states that, since the applicant's immigration concerns arose, [REDACTED] has become quite tense and has had frequent headaches and a lot of tension in his neck. It states that [REDACTED] feels a general emotional malaise. It states that [REDACTED] has a deep concern for the applicant's physical welfare and has expressed worry about how her condition may deteriorate without proper care in Mexico. [REDACTED] concludes that [REDACTED] is presently experiencing significant distress concerning the possibility of being separated from his wife and that, over the time of their marriage, he has become dependent upon the applicant to manage day-to-day activities and duties in the marriage, including cooking, paying bills and managing the household. He states that a forced separation from the applicant will likely exacerbate [REDACTED]'s current anxiety and tension and will likely result in an acute adjustment disorder. [REDACTED] states that, at [REDACTED]'s age and without any previous life experience with loss to serve as a learning experience, [REDACTED]'s forced separation from the applicant will likely dramatically increase his anxiety and, given his "borderline diabetes," the levels of stress will significantly impact his overall health. Finally, [REDACTED] states that the separation of the applicant from [REDACTED] will result in serious psychological harm to him and significantly increase his physical health concerns due to the impact stress has on diabetes in general.

While the input of any medical health professional is respected and valued, [REDACTED]'s evaluation is based on a single interview with [REDACTED] and indicates that he does not have a history of mental health issues or treatment. A psychological report based on one interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering Dr.

's findings speculative and diminishing his evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that [REDACTED] has sought or received any other treatment or evaluation for anxiety and tension at any other time. Accordingly, [REDACTED]'s evaluation will be given little evidentiary weight. Additionally, the record does not contain evidence, other than the applicant and Mr. [REDACTED]'s declarations and [REDACTED]'s statements to [REDACTED], that [REDACTED] suffers from borderline diabetes or that the applicant has had knee surgery, requires further treatment or will be unable to receive appropriate treatment in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)).

There is insufficient evidence in the record to establish that the applicant or [REDACTED] suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [REDACTED] may experience anxiety, tension and depression as a result of separation from his spouse and the separation of his children from their mother, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as his adult children and siblings, in the United States who may be able to assist him physically and emotionally in the absence of the applicant.

Counsel, on appeal, does not make any assertions in regard to the hardship [REDACTED] may suffer if he accompanies the applicant to Mexico.

[REDACTED] in his declaration, states that he would be unable to move to Mexico with the applicant because he has no property there. He states that finding a job at his age would be impossible, especially finding one that provides benefits like medical insurance. He states that the United States has been his home for the past 24 years and that to start a new life in a foreign country will pose a great hardship. He states that his wife will be unable to receive the same quality of care for her knee condition as she would receive in the United States and that this would cause him further suffering and anxiety.

Having analyzed the hardships [REDACTED] claims he would suffer if he were to join the applicant in Mexico, the AAO finds that they do not constitute extreme hardship. [REDACTED]'s claim that he would be unable to obtain *any* employment in Mexico is not supported by the record and, by itself, does not prove that he would suffer extreme economic hardship if he returned to Mexico with the applicant. *Matter of Soffici, Supra*. The record also fails to establish that the applicant suffers from a physical ailment, that requires continuing treatment or that appropriate treatment for her condition would be unavailable in Mexico. While the hardships that would be faced by [REDACTED] in relocating to Mexico, his readjustment to the culture, economy, environment, separation from friends and family in the United States, and an inability to obtain the same opportunities he would receive in the United States, are unfortunate, they are the types of hardships routinely encountered by a spouse accompanying a removed alien to a foreign country. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of the denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he 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 (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 therefore finds that the applicant has failed to establish extreme hardship to her 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 she 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.