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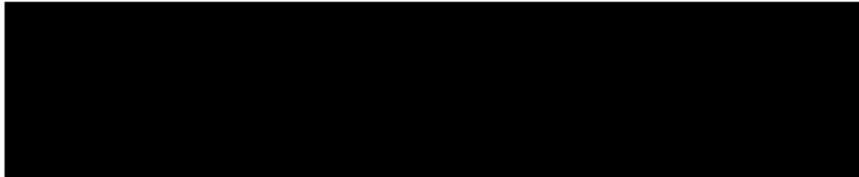


FILE: [Redacted] Office: SEATTLE (SPOKANE) Date: **MAY 21 2008**

IN RE: Applicant: [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:



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, Seattle, Washington, 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 seeking admission into the United States by fraud or willful misrepresentation. She is the wife of a lawful permanent resident of the United States, and sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated October 3, 2005. 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 the applicant sought to gain admission into the United States on December 22, 1999 by presenting to an immigration officer a Mexican passport with a counterfeit biographic page bearing a counterfeit I-551 stamp indicating lawful permanent resident status. The applicant admitted in a sworn statement to buying the document for \$500.

Because the applicant presented to an immigration official a counterfeit document in order to gain admission into the United States, the AAO finds that she is inadmissible under section 212(a)(6)(C) of the Act.

The waiver for fraud and misrepresentation is under section 212(i) of the Act; it 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 the determination of whether the Secretary should exercise discretion. *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 applicant’s spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, 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 birth certificates, letters, IEP forms, a marriage certification, and other documents.

On appeal, counsel states that the applicant and her husband married on December 30, 1994 and have lived together for the past 11 years since their marriage. He states that their two U.S. citizen children are in school and that their son, who was born in 1995, has a learning disability. Counsel indicates that the applicant spends more time with the children, as she works part-time, while her husband works full-time. Counsel states that the applicant takes the children to music and karate classes and manages the house. Counsel states that the applicant has lived in the United States since 1994, departing one time for a brief period. He states that the applicant’s husband has no other family members living in the United States other than his wife and children, and that they have a close relationship. Counsel states that the applicant’s husband would not be able to afford childcare for his children if they remained in the United States without the applicant, and that their performance in school will be affected. He indicates that the combined hardships stemming from separation will result in extreme hardship to the applicant’s husband.

The affidavit by the applicant’s husband is similar in content to that of counsel. In addition, the applicant’s husband states that his son, who is in the fourth grade, has a learning disability for which he attends a special education program. He states that his son is in an individualized education program in the hope that he will

be brought up to a normal level in the future. He indicates that his wife is actively involved in the education of their children. He states that his wife works part-time earning minimum wage, which helps pay for the children's music and karate lessons. The applicant's husband indicates that he works in a warehouse packing vegetables. The applicant's husband states that his son would not have special education classes in Mexico and that he wants his children to grow up in the United States, where their friends and relatives live. He states that they would have no future in Mexico.

The IEP Goal Page, which applies to 2002, indicates that the applicant's son needs improvement in communication, math, and reading.

It is noted that in a letter dated January 24, 2005 the applicant states that she remained in Mexico, following her December 1999 removal, for five years.

The applicant's son was born on September 12, 1995 and her daughter on November 10, 1998, as shown by the birth certificates.

The letter by Quincy Foods, LLC. dated January 20, 2005 conveys that the applicant's husband is employed as a dumper earning \$10.00 per hour.

The W-2 form for 2003 shows the applicant's husband earned 26,336.

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

The AAO notes that the record contains inconsistencies in that the applicant claims to have lived in Mexico from December 1999 to December 2005, yet her husband indicates in his affidavit that they have not separated, except for a brief period, since their marriage in 1994. It is incumbent upon the petitioner 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, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel is correct in stating that family separation is important in determining hardship. Courts 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, the fact that an applicant has children born in the United States is not sufficient, in itself, to establish extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th

Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as did the court in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, 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. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (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.

The record conveys that the applicant's husband is very concerned about separation from his wife. 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, 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 will be experienced by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The assertion by the applicant's husband, that he will experience financial hardship if he is separated from his wife, is undermined by his wife's statement, that she lived in Mexico from December 1999 to December 2005. The applicant does not explain how her husband managed to financially support their children while she lived in Mexico for five years. 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).

The applicant's husband indicates that their son has a learning disability and it is primarily his wife who is involved in the children's education. It is noted that the IEP document submitted on appeal relates to the year 2002 and the appeal was filed on after October 2005. Because no current IEP documentation was submitted on appeal, the AAO cannot determine whether the applicant's son still has need of the special education program. Furthermore, because the applicant claims to have lived in Mexico from 1999 to 2005, the AAO finds that her involvement with her children, particularly with their education, would have been greatly limited during that period of time.

The record is insufficient to establish that the applicant's husband would experience 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 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).

The applicant's husband conveys that he is concerned about the education of his children if they were to live in Mexico. As previously stated, although hardship to an applicant's child is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's spouse, as a result of her concern about the education of their child, is a relevant consideration.

The applicant's wife asserts that her daughter would not have the same educational opportunities in the Philippines. In *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986), the court stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." *Id.* at 499.

The applicant's husband indicates that in Mexico his son would not receive special assistance to overcome his learning disability. As previously stated, because the record does not contain current IEP documentation, the AAO cannot determine whether the applicant's son still has special learning needs. Furthermore, no documentation has been submitted to establish that Mexico's educational system does not assist children with special learning needs. 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).

The applicant's husband states that they will have no future in Mexico. Difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

The AAO finds that the other factors, which *Matter of Ige* indicates are needed to combine with economic detriment to make living in Mexico an extreme hardship to the applicant's husband, are missing.

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 were to remain in the United States without her, or in the

alternative, that he were to join her to live in Mexico. 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 sections 212(i) or 212(a)(9)(B) of the Act.

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) or 212(a)(9)(B) 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.