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**U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: **MAY 29 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 procured admission into the United States by fraud or willful misrepresentation on August 30, 1992. The applicant is married to a U.S. citizen and has a lawful permanent resident father. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record contained no evidence to support a finding that the applicant's spouse would experience extreme hardship if the applicant were removed from the United States. The application was denied accordingly. *Decision of the District Director*, dated April 12, 2005.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He also states that the district director erred in not considering hardship to the applicant's lawful permanent resident father, who is a qualifying relative under section 212(i) of the Act. Counsel cites *Salcido v. INS*, *Salinas-Pastora v. INS* and *Cerrillo-Perez v. INS* in support of his assertions that the district director did not give sufficient weight to the hardship caused by family separation. *Form I-290B*, dated May 4, 2005.

The record indicates that on August 30, 1992, the applicant presented a fraudulent Form I-94 to gain entry into the United States.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has 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). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite respondent’s testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse

Counsel’s assertion that separation from family in and of itself establishes extreme hardship is unconvincing. In *Cerrillo-Perez v. INS*, the Ninth Circuit Court of Appeals did not state that separation from family alone establishes extreme hardship, only that it may establish extreme hardship. The Ninth Circuit did not analyze or make a finding regarding whether the applicant’s separation from family established extreme hardship. The Court remanded the case to the BIA for consideration of all the non-economic hardship factors in the case, including separation from family. The AAO notes that 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).

The qualifying relative in the applicant's case is his U.S. citizen spouse. Although, the AAO notes that the applicant's waiver application states that the applicant's father is a lawful permanent resident, the record contains no documentation supporting this statement. Thus, only hardship to the applicant's spouse will be considered.

Extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record of hardship includes: a statement from the applicant's spouse; statements from the applicant's bank, showing debt owed by the applicant and his spouse; bank statements; and 2001 and 2002 Form 1040A tax returns.

The applicant's spouse states that she and the applicant have been married since 1999 and have never spent a night apart. *Spouse's Statement*, dated April 25, 2002. She states that she would miss the applicant if he had to leave the United States and that if he had to relocate to Mexico, she would go with him to help him start a new life. She states that relocating to Mexico would be extremely difficult for her and the applicant because they would have to leave many bills unpaid and they have no family in Mexico. She states that both her family and the applicant's family live in the United States and they are very close to them. In addition, she states that she and the applicant hope to have children and they want to raise their children in the United States. *Id.* The record also includes a letter from the applicant's bank, Atascadero Federal Credit Union, which states that the applicant and his spouse have three outstanding loans with their institution, totaling \$18,921.16. *Letter from Atascadero Federal Credit Union*, dated February 7, 2003. The record also shows that in 2001 the applicant and his spouse earned \$43,597 in taxable income and in 2002 the applicant and his spouse earned \$53,968 in taxable income. *Forms 1040A for 2001 and 2002.*

The AAO notes that the applicant's spouse states that she would miss the applicant if he had to leave the United States and that they have never spent a night apart since they were married. The current record, however, does not establish that in being separated from her husband, the applicant's spouse would suffer hardship above and beyond what would normally be experienced by any spouse whose husband was removed from the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Therefore, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship if she remained in the United States following his removal.

The applicant's spouse asserts that relocating to Mexico would be extremely difficult for her because her family lives in the United States. She also contends that relocation would require her to leave many bills unpaid in the United States. Although the record indicates that the parents of the applicant's spouse live in the United States, the applicant has provided no evidence to establish the emotional impact that moving away from her parents would have on his spouse. Neither does the record offer evidence that the applicant's spouse and her husband would be unable to obtain employment in Mexico and, thereby, continue to pay down their outstanding debts in the United States. Accordingly, the record fails to demonstrate that the applicant's spouse would experience extreme hardship if she relocated to Mexico with the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.