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U.S. Citizenship  
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FILE:

Office: PHOENIX, AZ

Date: **OCT 28 2008**

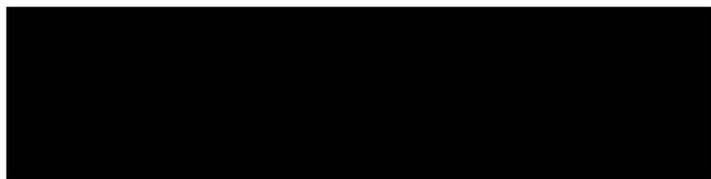
IN RE:

Applicant:



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.

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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED], 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. The applicant 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 and failed to establish the favorable grant of discretion. *Decision of the District Director, dated September 19, 2006.* The applicant filed a timely appeal.

In the notice of appeal counsel indicates that she is sending a brief and/or evidence to the AAO within 30 days. On September 5, 2008, the AAO faxed a request to counsel for the brief/and or evidence. Counsel responded that she did not submit any additional evidence. Consequently, the record as constituted is complete.

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 applicant's waiver application and her affidavit dated July 11, 2006, reflect that the applicant presented a false I-551 lawful permanent resident card at the El Paso Port of Entry so as to gain admission into the United States. Based upon the admissions in those documents, the district director was correct in finding [REDACTED] inadmissible under section 212(a)(6)(C) of the Act for attempting to use a false I-551 card to gain admission into the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, 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 is not a consideration under the statute, and unlike section 212(h) of the Act where a

child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to [redacted] and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [redacted] her lawful permanent spouse and her mother and father, who are lawful permanent residents. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 qualifying relative must be established in the event that the qualifying relative remains in the United States without the applicant, and alternatively, that he or she joins the applicant to live in the Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel describes judicial and administrative decisions and how they interpret hardship to a qualifying relative. Counsel contends that [redacted] has established “extremely unusual and exceptional hardship to her qualifying relative.” Counsel states that [redacted] family members reside in the United States and that [redacted] has no ties with Mexico; that in Mexico [redacted] will not find comparable employment to the position he now holds; that he will lose his retirement plan and social security if he went to Mexico; and that [redacted] standard of living will be dramatically decreased in Mexico. Counsel claims that [redacted] will not be able to financially support his wife if she lived in Mexico and he remained in the United States. She states that [redacted] is emotionally dependent on his wife, and when they have children their children will not have adequate medical care in Mexico. Counsel asserts that [redacted] 75-year-old mother cannot join her daughter in Mexico. She states that [redacted] provides care for her mother by cooking, taking her to medical appointments, and ensuring she takes her medicine. Counsel states that [redacted] mother was diagnosed with high blood pressure and arthritis and that she visits the doctor every two months. According to counsel, Ms.

77-year-old father cannot join his daughter in Mexico because he has high blood pressure, takes medication, and is closely supervised by medical personnel. Counsel states that [REDACTED] siblings, parents, husband, in-laws, and friends indicate that [REDACTED] is a person of good moral character. She indicates that [REDACTED] has lived in the United States for 20 years.

To establish extreme hardship, the record contains affidavits, a marriage certificate, real estate documents, invoices, a rental agreement, an employment letter, wage statements, photographs, income tax records, letters by the applicant's family members, a letter by the applicant's church, letters by the applicant's friends and in-laws, and other documentation.

In his affidavit, [REDACTED] conveys that he has a close relationship with his wife and that his life would be sad without her, that his wife is active in the community, and that they have no children.

In her affidavit dated July 11, 2006, [REDACTED] indicated the following. She arrived in Los Angeles, California, in 1986 from Mexico and remained in the country until December 1993. On January 2, 1994, she tried to cross the El Paso border illegally with a false identification and was caught and returned to Mexico. After being returned she was to pay a man to get her across the border, but was caught again and returned to Mexico so she did not pay the man. She then attempted to cross again by bus and was successful. She did not follow the law because she wanted to be with her family. She has a close relationship with her husband.

Considered collectively, the letter by [REDACTED] and the letter by [REDACTED], the applicant's parents, convey that the applicant has a close relationship with them and with her siblings, in-laws, and husband. Ms. [REDACTED] indicates that the applicant provides cares when she is sick and on other occasions.

The income tax records for 2005 show \$45,494 in income for [REDACTED]

In rendering this decision, the AAO has considered all of the evidence in the record.

The applicant fails to establish that her husband, father, or mother would experience extreme hardship if her husband, father, or mother remained in the United States without her.

In 2005, [REDACTED] earned approximately \$45,000, while his wife was unemployed; for this reason, the AAO finds that if [REDACTED] remained in the United States without his wife, his income would be sufficient to maintain his household. The AAO finds that no documentation has been submitted to demonstrate that Mr. [REDACTED] wife would be unable to obtain employment in Mexico and that [REDACTED]'s income is not enough to financially support her if she lived in Mexico. 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).

Although counsel claims that [REDACTED] must provide care for her parents on account of their health problems, the record contains no documentation of her father's or mother's medical condition, and no documentation establishes why [REDACTED] would be needed to provide daily care for them. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*. Furthermore, the AAO notes that the applicant's siblings are available to provide care for their parents. 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.

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, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The letters and affidavits in the record convey that the applicant’s husband and parents have a close relationship with her and are very concerned about separation. 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 [REDACTED] and the applicant’s mother and father, if they remain 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 endured by [REDACTED] and the applicant’s mother and father, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

In considering each of the hardship factors raised here, both individually and in the aggregate, it is concluded that these factors do in this case establish extreme hardship to the applicant’s husband, father, or mother in the event that her husband, father, or mother were to remain in the United States without her.

The AAO finds that the record fails to establish extreme hardship to the applicant’s husband, father, or mother in the event that her husband, father, or mother were to join the applicant to live in Mexico.

In *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), the BIA indicates that although political and economic conditions in an alien's homeland are relevant in determining hardship, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to establish extreme hardship to a qualifying relative in the event the qualifying relative were to join the applicant. Here,

although the applicant's parents are advanced in age, no documentation has been provided by the applicant to establish that her father or mother would experience economic hardship if they were to join her in Mexico. And as previously discussed, no documentation has been furnished to show that either of the applicant's parents has a serious medical condition.

It is claimed on appeal that [REDACTED] will not find a job in Mexico comparable to the one he now holds. Judicial and administrative cases have held that difficulty in obtaining employment is 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").

As for the claims that the [REDACTED] will not be able to obtain the best possible medical care in Mexico and that [REDACTED] will lose his employee benefits, the fact that medical facilities in a foreign country are not as good as in the United States is not per se extreme hardship, *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), and the loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985).

Counsel states that [REDACTED] has no ties with Mexico. The AAO recognizes that [REDACTED]'s adjustment to the culture and environment in Mexico would be difficult, but such difficulties will be mitigated by the moral support of his wife, which is his family tie to Mexico.

Having assessed each of the hardship factors raised here, both individually and in the aggregate, the AAO concludes that these factors do in this case constitute extreme hardship to the applicant's husband, father, or mother in the event that her husband, father, or mother were to join her to live in Mexico.

In summary, extreme hardship to a qualifying relative has not been established 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 and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.