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[REDACTED]

H3 & H4

FILE: [REDACTED] Office: SAN FRANCISCO

Date: **AUG 15 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(6)(C) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a)(6)(C) and (a)(9)(B)

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 waiver application was denied by the District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for procuring admission to the United States by fraud or willful misrepresentation. 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 husband, [REDACTED] and their four children, all of whom are U.S. citizens.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her husband, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated May 10, 2004.

On appeal, counsel for the applicant asserts that [REDACTED] has shown that he will suffer extreme hardship, psychologically, emotionally and financially, if his wife is not permitted to reside with him and their children in the United States. *Form I-290B*, dated June 9, 2004; *Brief in Support of Appeal*, dated July 7, 2004.

In addition to the above mentioned Brief, the record includes (1) a declaration [REDACTED] in which he describes how his life would be destroyed if his wife were denied permission to reside in the United States with him and their children; (2) an accountant's detailed summary of financial records showing the couple's income from a grocery store owned by [REDACTED] and his brother since 1984, expenses, including a mortgage, and estimated costs of providing childcare and covering household expenses if his wife were absent and unable to provide the full-time care she currently provides; (3) a letter from a Licensed Marriage and Family Therapist detailing the couple's account of their 18-year relationship and their mutual dependency, respect and love; their respective responsibilities, hers as homemaker and main caretaker of the children and his as source of financial support; and noting their anxiety over the potential break up of the family; (4) letters of support from the applicant's church and a preschool where she volunteers, and from a pediatrician noting that the applicant routinely accompanies her children for their medical visits. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant used her non-immigrant visa for entry into the United States in 1995, although she resided at that time in the United States. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. Counsel does not contest this finding.

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.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 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. In examining whether extreme hardship has been established, 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).

Hardship the applicant herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives. Thus, hardship suffered by the applicant or the children will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant’s U.S. citizen husband.

This matter arises in the San Francisco 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). See also *Cerrillo-Perez v.*

*INS*, 809 F.2d 1419, 1424 (9th 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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that he accompanies her and resides in Mexico or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her husband, Mr. [REDACTED] in the event that he relocates to Mexico. In this case, the record reflects [REDACTED] was born in Mexico in 1961, and that he and his family moved to the United States in 1972 when he was 11 years old. See *Brief in Support of Appeal, supra* at 3; *Statement by Mr. Magallanes*, dated March 6, 2003. He has resided in the United States since then and became a citizen in 1996; his entire family resides in the United States. *Id.* He and his brother own a grocery store together, where he works long hours in order to maintain the business and earn a living; he has owned the store since 1984. *Id.* He and his wife have known each other since 1985, his wife has resided in the United States since 1989, and they married in 2001; neither has a college degree. See *Brief in Support of Appeal, supra* at 3-4; *Statement by Mr. Magallanes; Psychological Assessment by Licensed Marriage and Family Therapist*, dated June 24, 2004. They have four children together, all of whom were born and raised in the United States, who range in age from six to 18. *Form I-601*. They bought a new house in 1999. *Statement by Mr. Magallanes, supra; Income Tax Records, 1999-2001*. The record shows a visit by [REDACTED] Magallanes to Mexico in 1995, but there is no indication of any other visits by either spouse since then. Though counsel for the applicant [REDACTED] refer to economic and social problems in Mexico that would make it extremely difficult for the couple to earn a living and raise their children there, the record does not contain evidence on country conditions for Mexico.

The AAO recognizes that the family would suffer economic detriment and their wage-earning potential would be diminished if they moved to Mexico, and that the standard of living for the couple and their children would be reduced. There is no indication that either the applicant or [REDACTED] skills that would be marketable in Mexico. If they moved there, they would lose their home, [REDACTED] would lose his business, and the children would be uprooted from the only life they know.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (“lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss, decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”).

It is clear that [REDACTED] has spent his entire adult life in the United States and has no family in Mexico or other significant ties remaining to Mexico. His wife has also lived most of her adult life in the United States, and their four children were born and raised in the United States. [REDACTED] were forced to relocate to Mexico and the family decided to join her there, they would suffer both financial and personal hardships. The hardship [REDACTED] would face is substantially greater than that which was found insufficient in *Ramirez-Durazo, supra*. The hardship in that case, which involved suspension of deportation under former section 244 of the Act, 8 U.S.C. § 1254, rather than a waiver of inadmissibility, involved a family of five, only one of whom, the youngest child, was a U.S. citizen. The Ninth Circuit noted in that case that the BIA had properly significantly discounted the hardship that the family would face if removed, due in part to the relative ease of transition back into their home country, where they had an abundance of family ties. Unlike the applicants in *Ramirez-Durazo, supra*, [REDACTED] has no family ties in Mexico. He has not lived there for the last 34 years, and his family resides in the United States and would not be available in Mexico to potentially assist him and his children to adjust to life in a country that he left as a child and where his children have never resided. Neither would they be available to help reduce the substantial burden of caring for four children. This lack of support, combined with the diminished family income likely in Mexico and loss of his business, home, and family and social ties lead to a conclusion that [REDACTED] would indeed suffer extreme hardship if he chose to move to Mexico to avoid his and his children’s separation from his wife.

The second part of the analysis requires the applicant to establish extreme hardship to her husband in the event that he remains in the United States separated from the applicant. Statements and financial records indicate that [REDACTED] works from 7:00 a.m. to 10:00 p.m. weekdays and often weekends to support his family with earnings from his grocery store and that his wife is a fulltime homemaker. *Brief in Support of Appeal, supra* at 4. Included in the record are estimates that show that if she were not available to support her husband and children, the financial cost to [REDACTED] to pay for such services, including childcare, cooking and cleaning, would be overwhelming, leaving the family with insufficient funds for other living expenses. *See Id.; Statement by [REDACTED] supra; La Tapatia Mexican Market Accounts for 2003*, prepared by Azteca Business Services, and accompanying summaries, dated July 7, 2004. Statements and letters of support for the couple indicate the involvement [REDACTED] de Magallanes in the church and her children’s school and in seeing that her children have proper medical care; the couple’s strong commitment to each other and their children; and an effective partnership of sharing responsibilities in a relationship of over 18 years. *See Statement by [REDACTED] supra; Brief in Support of Appeal, supra*;

*letter from St. Vincent Ferrer Church, dated February 14, 2003; letter from St. Vincent Ferrer Preschool, undated; Psychological Assessment by Licensed Marriage and Family Therapist, supra.*

The record shows that though [REDACTED] is able to support his family of six with the income from his grocery store, he is able to work the long hours necessary because his wife shoulders the burden of maintaining their home and caring for the children while he is working. If she were not allowed to remain in the United States, he would need to take over these responsibilities. In order to continue to run his grocery store and earn a living, he would need to ensure proper child care and incur the other expenses of running a household for himself and his four children, and also provide support for his wife in Mexico. The record indicates that these changes would represent an extreme financial burden for [REDACTED]. Moreover, the record indicates that the 18-year relationship between [REDACTED] and his wife is extremely strong and that his emotional and personal well-being are dependent on this relationship. [REDACTED] clearly articulated that his emotional welfare is dependent on the welfare of his wife and children, and that he could not bear putting his children through the trauma of separation from their mother or the trauma of uprooting them from their life in the United States. His statements and the analysis of the couple by a Licensed Marriage and Family Therapist reveal a high level of anxiety that he is suffering and will suffer if he or his children do not have the companionship and care of their wife and mother. The letters in the record provided by the children's doctor and school refer to his wife's active and caring role in the family.

Based on the above evidence, the applicant has established that the cumulative general emotional effect that separation from his wife would have on [REDACTED] combined with the increased financial, personal and familial burdens that he would face, render the hardship in this case beyond that which is normally experienced in most cases of removal.

A discounting of the hardship [REDACTED] would face in either the United States or Mexico if his wife were refused admission is not appropriate. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors and Ninth Circuit law, cited above, the AAO finds that the applicant has established that her husband would suffer extreme hardship if her waiver of inadmissibility were denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *See Matter of Mendez-Morales, supra* at 300 (BIA 1996). (Citations omitted).

The adverse factors in the present case are the applicant's prior misrepresentation for which she now seeks a waiver, and years of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to her husband if she were refused admission, her long-term supportive relationship with her husband and four U.S. citizen children, and her active and positive role in raising her children and in the community, evidenced by letters of support in the record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.