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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES

Date: JAN 08 2007

IN RE: [REDACTED]

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

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, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] (Mr. [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 seeking to procure admission to the United States by fraud or willful misrepresentation. He 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 his wife, [REDACTED] (Mrs. [REDACTED]), and their three 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 his qualifying relative, his wife, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated March 22, 2005.

On appeal, counsel for the applicant asserts that Mr. [REDACTED] has shown that his wife will suffer extreme hardship, psychologically, emotionally and financially, if he is not permitted to reside with her and their children in the United States, particularly in light of her strong ties to the community in the United States and the profound grief she would suffer if she moved to Mexico away from three children from a former marriage who could not accompany her there. *Form I-290B*, dated April 12, 2005; *Brief in Support of Appeal*, dated April 20, 2005. Additional evidence submitted on appeal includes birth certificates of the couple's third child, born in December 2004 and of Mrs. [REDACTED]'s three children from a prior marriage (born in 1989, 1990 and 1993); statements from the applicant and his wife indicating the financial and emotional burden they would suffer if forced to live apart and how Mrs. [REDACTED] could not move to Mexico because she could not bear to leave her extended family, especially her children; a mortgage statement indicating monthly payments due of \$1,601; and tax documents from 2004 showing earnings of approximately \$14,000 for Mr. [REDACTED] and \$15,000 for Mrs. [REDACTED].

In addition to the above mentioned Brief and evidence submitted on appeal, the record contains evidence submitted in support of Mr. [REDACTED]'s application for a waiver of inadmissibility, including (1) the U.S. Department of State, *Country Reports on Human Rights Practices – 2002*, for Mexico, highlighting sections that report on violence against women and children; (2) a report entitled "Mexico at a Glance" (no source given) indicating that the estimated 2002 per capita income in Mexico is \$5,920; (3) income tax returns from 1993, 1995, and 1997 through 2003, indicating that both Mr. and Mrs. [REDACTED] have been employed consistently, often at several jobs in a given year, and paid taxes, and that their individual incomes during that period ranged from approximately \$5,000 in 1993 to \$24,000 in 1999; and (4) a letter of recommendation for Mr. Noris from a co-worker attesting to his good character and reliability. *See Application for Waiver of ground of Inadmissibility (Form I-601)*, filed June 17, 2004, with attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented false employment documents as proof of employment in Mexico when he applied for a non-immigrant (tourist) visa for entry into the United States in 1998. 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-Morales*, 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 himself 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 wife.

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). *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 she accompanies him and resides in Mexico or in the event that she remains 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 first part of the analysis requires the applicant to establish extreme hardship to his wife, Mrs. [REDACTED], in the event that she relocates to Mexico. In this case, the record reflects that Mr. [REDACTED] was born in Mexico in 1970 and has resided in the United States since 1991. Mrs. [REDACTED] was born in Mexico in 1971 and has lived in the United States since she was eight years old. She and Mr. [REDACTED] were married in 1998; they have three children together, all of whom were born in the United States, in 1998, 2000 and 2004 respectively. Mrs. [REDACTED] also has three U.S. citizen children from a prior marriage. Mrs. [REDACTED] states that her entire family lives in the United States, including her parents, aunts, uncles, siblings, and nieces and nephews, and that it would hurt her deeply if she couldn't see them. She also states that she could not bear to be separated from her older children from her previous marriage and that their father would not allow them to move to Mexico. She adds that separating her younger children from their father, Mr. [REDACTED] would be devastating for all of them, and that she and Mr. [REDACTED] depend on each other for everything, including financial and emotional support. She and her husband both state that their combined wages in the United States allow them to pay the bills, including child care and their mortgage; they both indicate that Mrs. [REDACTED] would most likely not move to Mexico, for the reasons stated above and because of the suffering such a move would cause her and her younger children. Tax returns for the couple show that the most they have earned in one year was approximately \$32,700 in 2003; the evidence indicates that Mr. [REDACTED] has been the family's main financial support over the years, but that in 2004, Mrs. [REDACTED] earned \$15,000, and Mr. [REDACTED] earned \$14,000. Mrs. [REDACTED] generally works as a clerk or receptionist; Mr. [REDACTED] has worked since 2000 at a car wash, where he is currently a detailer. Their monthly mortgage payments are \$1,601. The report in the record of Mexico's per capita income indicates that average earnings in 2002 were estimated to be approximately \$6,000; if they were to earn that average amount, they could not cover their current expenses, though there is no evidence in the record of current estimates. There is no indication that the couple has exceptional skills, education or

training that would allow them to earn more than the average income, but there is also no indication that they would not be able to find employment.

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. If they moved there, they would lose their home, as, even if both were able to work, they could not afford to live and pay their mortgage. They would both lose their current incomes, and the children, two of whom are of school age, would be uprooted from the only life they know. Moreover, Mrs. [REDACTED] has indicated that she would suffer along with them and also could not bear to leave her extended family or her children from a former marriage, who would not be free to travel with her.

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”); *Shoostary 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 Mrs. [REDACTED] has spent her entire adult life and most of her childhood in the United States and has no family in Mexico or other significant ties remaining to Mexico other than her husband and his family. Her husband has also lived most of his adult life in the United States, and their three children were born in the United States as well as Mrs. [REDACTED]’s three children from her prior marriage. Five of her children are school-aged. If Mrs. [REDACTED] chose to relocate to Mexico, she would be forced to leave three of her children behind and she and her family would suffer both financial and personal hardships in Mexico. The hardship she 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*, although Mr. [REDACTED]'s parents reside in Mexico, they are both over 70, and Mr. [REDACTED] states that he contributes financially to their support. **Given their advanced age and the fact that Mrs. [REDACTED] has indicated that she has no other family there and has not lived in Mexico for the last 27 years, there is no indication that she would have family or community ties there to potentially assist her and her children adjust to life there or help to reduce the substantial burden of caring for three children. She would also suffer separation from her extended family and children in the United States. This lack of support combined with the diminished family income likely in Mexico and loss of home and family and social ties lead to a conclusion that Mrs. [REDACTED] would indeed suffer extreme hardship if she chose to move to Mexico to avoid her and her children's separation from Mr. [REDACTED].**

The second part of the analysis requires the applicant to establish extreme hardship to his wife in the event that she remains in the United States separated from the applicant. Statements and financial records indicate that Mr. [REDACTED] has generally been the primary financial support for his family, often working more than one job to earn sufficient income; and that Mrs. [REDACTED] has contributed up to \$15,000 to their joint income, but that on average during the last ten years she has contributed less. Their mortgage alone amounts to approximately \$19,200. Counsel refers to the 2005 Poverty Guidelines, noting that the minimum income for a family of four to live above the poverty line is \$22,610, and that without Mr. [REDACTED]'s contribution, the family would fall below that line. *See Brief in Support of Appeal, supra*. The AAO notes that the 2006 HHS Poverty Guidelines list \$23,400 as the minimum income requirement for a family of five, the current number in the Noris household. *See <http://aspe.hhs.gov/poverty/>*, last revised March 31, 2006. Even if Mrs. [REDACTED] were able to continue earning at her highest rate and Mr. Noris were able to work in Mexico at the average rate and contribute all of his income to support his family in the United States, they would not earn enough to meet that minimum.

The record shows that if Mr. [REDACTED] were not allowed to remain in the United States, Mrs. [REDACTED] would need to take over all of their shared responsibilities, including for the care of an infant and two young children. **The record indicates that these changes would represent an extreme financial burden for Mrs. [REDACTED], although she would have the continued support of her extended family in the United States. She would not be able to pay their mortgage and her income would place her below the poverty line for a family of five. The record also reflects that the 8-year relationship between Mrs. [REDACTED] and her husband is one of mutual dependence and love and that her emotional and personal well-being are dependent on this relationship as well as the relationship of her children to their father. Mrs. [REDACTED] clearly articulated that her emotional welfare is dependent on the welfare of her husband and children, and that separating her children from their father would be devastating for her as well as the children. Numerous photographs in the record support her statements that the children and their father have a close and loving relationship.**

Based on the above evidence, the applicant has established that the cumulative general emotional effect that separation from her husband would have on Mrs. [REDACTED] combined with the increased financial, personal and familial burdens that she would face, render the hardship in this case beyond that which is normally experienced in most cases of removal. A discounting of the hardship Mrs. [REDACTED] would face in either the United States or Mexico if her husband were refused admission is not appropriate. Although any one factor alone may not be extreme, a consideration of the entire range and combination of factors concerning hardship

in this case takes the case beyond those hardships ordinarily associated with removal or inadmissibility. *See Matter of O-J-O, supra.*

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 his wife would suffer extreme hardship if his request for a 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 he now seeks a waiver, and years of unauthorized presence. The favorable and mitigating factors are the applicant’s otherwise clean record, the extreme hardship to his wife if he were refused admission, his long-term supportive relationship with his wife and three U.S. citizen children, and his consistent record of employment and payment of taxes.

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.