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U.S. Citizenship  
and Immigration  
Services

Hu

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO (SACRAMENTO)

Date: MAY 23 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, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 seeking to procure 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], a lawful permanent resident (LPR) of the United States.

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*, April 19, 2005.

On appeal, counsel for the applicant asserts that the District Director abused his discretion in failing to review all of the evidence submitted in support of the applicant's hardship claim cumulatively and instead issued a perfunctory denial based solely on the declaration of the applicant's spouse. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B) and Brief in Support of Appeal*, May 18, 2005. In addition to counsel's brief, the record also includes numerous exhibits submitted in support of Mrs. Naranjo's Form I-601, which was filed in March 2005.

**The exhibits in the record include, but are not limited to:** (1) [REDACTED] sworn declaration, describing how she and her husband grew up in a small town in Michoacan, Mexico, and were friends before they married in 1993; the lack of employment opportunities where they lived in Mexico; and how their parents continue to reside there but, other than [REDACTED] father who works in agriculture, have medical problems and are not employed; she also described how she tried to enter the United States to join her husband in 1998, but was caught and waited until she was eligible for a visa to lawfully enter on a V Visa in 2001; and how she and her husband rely on each other for everything and have been trying to have children, including by undergoing fertility treatment, which she fears she will not be able to continue in Mexico; (2) [REDACTED] sworn declaration confirming his wife's statements and explaining how difficult it has been to live without her, financially and emotionally, and how they struggled to obtain health insurance and find assistance in their attempts to have a child, noting that neither opportunity for employment nor medical treatment would be available in their home towns; he also states that he has not resided in Mexico for 23 years; all his siblings, whom he sees frequently, reside in California, and only his parents remain in Mexico; (3) a Clinical Assessment of [REDACTED] dated March 21, 2005, by a **Licensed Clinical Social Worker** (apparently based on a Psychological Assessment Inventory) concluding that [REDACTED] is dependent on his relationship with his wife in ways that enable him to deal with stress; that **the social support**, warmth and nurturance provided by his wife is the source of his fundamental personal security and stability; (4) Medical Records indicating that [REDACTED] underwent testing to determine the cause of her infertility in March 2005; proof of insurance by Kaiser Permanente for both [REDACTED] and an article regarding the relationship between stress and infertility; (5) a letter, dated March 14, 2005, from the Pastor of St. Charles Borromeo Church in Sacramento certifying that the couple has been attending the church for approximately three years;

(6) a letter, dated August 13, 2003, from the Branch Manager of Western Farm Service in Walnut Grove, California stating that [REDACTED] was an excellent employee and has been employed full time since April 2002; (7) a letter, dated August 1, 2003, from the President of Bell Tasty Foods in Elk Grove, California stating that [REDACTED] has been employed there full time since January 2002; (8) Country conditions reports and various news articles indicating that there is widespread corruption, poverty and unemployment in Mexico and a high crime rate; one article from 1996 notes that, even though health care in Mexico is the right of every citizen, many women never have pre- or postnatal care, and “every six hours a woman in Mexico dies in labor or from other complications related to pregnancy” and that “[h]ealth authorities in Mexico are just beginning to recognize the astonishingly high maternal mortality rate as a major problem.” CNN World News, <http://www.cnn.com/WORLD/9607/25/mexico.healthcare/>); and (9) the couple’s marriage certificate and numerous photographs of the ceremony and of other events in their lives.

The record also contains evidence of [REDACTED]’s attempt to use false documents to enter the United States in June 1998 and an Expedited Removal Order. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States in 1998 by presenting false documents. As a result of this prior misrepresentation, the applicant was found to be inadmissible to the United States. The applicant 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 herself experiences due to removal or inadmissibility is not a listed factor in section 212(i) waiver proceedings. However, hardship suffered by the applicant will be considered to the extent that it results in hardship to a qualifying relative in the application, in this case, the applicant's LPR husband. *Matter of Recinas, et al.*, 23 I&N Dec. 467, 471 (BIA 2002).

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, regarding consideration of a request for suspension of deportation under former section 244(a) of the Act, 8 U.S.C. § 1254(a) (1994), "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 record reflects that [REDACTED] was born in Mexico in 1962; the applicant was born in Mexico in 1970. **Based on their sworn statements, they grew up in the same small town in Mexico and were friends for many years before they married.** [REDACTED] states that he has resided in the United States since 1982; all seven of his siblings reside in California; and his aging parents, whom he assists financially are his only family members in Mexico. He became a permanent resident in 1990. In 1993 he and [REDACTED] were married in

Mexico. For several years they were apart, as [REDACTED] lived in the United States; he would visit his wife periodically, but they state that this became increasingly difficult because they missed each other and it became a financial strain for [REDACTED] to support two households; [REDACTED] could not work as there was no work for women in her small town, only agricultural work for men. They also had problems with infertility, but consultations and treatment in Mexico were unsuccessful. [REDACTED] attempted to join her husband in 1998, but was caught trying to enter the United States; she waited in Mexico until she could enter the United States legally, and applied and obtained a V Visa in 2001. Since that time, they have both been working; [REDACTED] states that his wife's presence has reduced the stress and hardship he was experiencing; their two incomes allow them to support themselves and send money to his parents; and when they were able to obtain health insurance, they again sought treatment for infertility. They expressed fear that the stress of potential separation will interfere with these efforts. [REDACTED] also expressed concern that they would have problems in Mexico in their efforts to have a child, as there is no medical treatment available in their town in Mexico and they would not have insurance. The couple states that they often see their extended family members who reside in the United States, including three siblings of [REDACTED] and [REDACTED] siblings.

[REDACTED] states that in their small town in Mexico he could not support a family and also assist his parents financially and that he and his wife would experience continuing difficulties with conceiving a child and getting proper medical care. There is no evidence in the record, however, to support a conclusion that the couple could not live or find employment elsewhere in Mexico. There is also no evidence in the record to support a conclusion that medical care is deficient in Mexico; a news article from 1996 regarding lack of prenatal care in rural areas cannot be relied on when assessing current conditions in Mexico. The evidence indicates that [REDACTED] has resided for over 20 years in the United States; he states that all of his extended family lives in the United States, except his parents. Both [REDACTED] and his wife claim that their parents suffer from medical problems and that they routinely send them money; however, the record lacks medical reports or evidence of money transfers that would support these claims. The record shows that [REDACTED] has difficulty conceiving. There is no evidence, however, to show that she and her husband cannot receive appropriate fertility treatment in Mexico should they decide to relocate there to avoid separation. Regarding financial hardship, the record shows that [REDACTED] has been employed full time since January 2002, and [REDACTED] has indicated that his wife's income has relieved him of the stress of having to support himself and her in separate households and also provide some financial support to his parents. The record lacks evidence of the couple's expenses or an explanation of how [REDACTED] covered his expenses in the absence of his wife's financial contribution before 2002.

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The statements of the applicant and her husband, without more, do not satisfy the applicant's burden of proof. 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 AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant should he choose to remain in the United States. However, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on

the record. The applicant's husband may also choose to relocate to Mexico with the applicant to avoid the hardship of separation, though he is not required to do so. He was born in Mexico, and there is no evidence in the record that he would be forced to adjust to an unfamiliar culture or language. Although he claims that he would be separated from his siblings if he moved to Mexico, he also notes that his parents remain in Mexico, so he would not be without family if he chose to return to Mexico. The AAO recognizes that he would lose his employment in the United States and suffer the resultant economic consequences if he returned to Mexico. However, there is no documentation regarding current conditions in Mexico that support a conclusion that he and his wife would be unable to meet their financial needs in that country. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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(a)(6)(C) 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.