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20 Massachusetts Avenue N.W. A3042
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

[redacted]

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FILE: [redacted] Office: SAN FRANCISCO, CA Date: DEC 03 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The matter 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). The applicant married (hereinafter a United States citizen, on October 5, 2000 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The District Director concluded that the applicant knowingly and willfully misrepresented herself to immigration officials by using an American passport to enter the United States in June 1993. Additionally, the District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director* dated July 24, 2003.

On appeal, counsel contends that the applicant did not commit fraud to enter the United States, but that even if the applicant did commit fraud, she is entitled to a waiver of inadmissibility becaus will suffer extreme hardship if the applicant is refused admission to the United States. In support of the appeal, counsel submitted a brief declaratio naturalization certificate, a letter from the interpreter present at the applicant's adjustment interview, a letter from employer, a doctor's letter describing an operation eceived in Mexico, birth certificates of the applicant's children, receipts for money th sent to his parents in Mexico, lawful permanent resident cards of iblings, and documents related to child support owed b The record also contains the following documents which were submitted in support of the original waiver application: letter from the applicant, letter from the applicant's employer, letters of support from various individuals, tax forms, marriage certificate, and the divorce decree dissolving irst marriage The entire record was considered in rendering this decision.

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:

> 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.

Counsel contends that the applicant did not commit fraud when she entered the United States in June 1993. According to counsel, the applicant stated at her August 14, 2002 adjustment of status interview that she entered the United States in a taxi, that the taxi driver had "border crossing cards" for the applicant and the other passengers in the taxi, and that since no United States official stopped or questioned them, the taxi driver never had to present the cards. Counsel maintains that the District Director mistakenly concluded that the applicant testified under oath that she entered the United States with an American passport in June 1993.

In her sworn statement of August 14, 2002, the applicant stated:

> Since my husband and young son were now in the United States I found a way to enter the United States, in a taxi, with other people, using a **local** passport provided by the taxi driver. I was asked to give it back after entering.

The District Director's conclusion that the applicant testified under oath that she used an **American** passport to enter the United States is not consistent with the language in the applicant's sworn statement. Counsel's contention that the applicant stated that the taxi driver had **border crossing cards** that were not given to the passengers and were never used is directly contradicted by the applicant's sworn statement. The applicant indicated in her sworn statement that she entered the United States **using a local passport provided by the taxi driver.** Regardless of how one interprets the word **local**, the applicant did not possess a valid passport. Accordingly, the applicant entered the United States by fraud or willfully representing a material fact.

Additionally, stated in his declaration that:

> "I understand that my wife made a mistake by paying a taxi driver to help her cross the border, and she is very sorry to have done so. She understands that what she did has placed her family in a very difficult position."

statement is further evidence that the applicant entered the United States by fraud or misrepresentation.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by Mr. Magallon. 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 "is not . . .fixed and inflexible," and whether extreme hardship has been established is 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 (BIA) provided a list of non-exclusive factors to determine whether an alien 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 the 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. 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).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact on Mr. of the applicant's departure from the United States. The record indicates th works fulltime for Pacific Concrete Construction and earns $23.00 per hour. The applicant works 25-30 hours per week at Los Altos Restaurant and earns $8.00 per hour. The applicant and have two United States citizen children, aged 8 and 12. pays child support for a 15 year-old United States citizen daughter from a previous marriage. egularly sends money to his parents in Mexico. Neither counsel nor the applicant submitted evidence establishing th ould be unable to meet his financial obligations if the applicant returned to Mexico. Also, s the option of moving to Mexico to be with the applicant. Counsel asserted that the financial conditions in Mexico are extremely difficult for persons who are i situation, but counsel provided no evidence to support this claim. In his declaration, ated that he could work in Mexico as a construction worker and earn enough money to cover his family's most basic necessities. Accordingly, wheth remains in the United States or moves to Mexico, the applicant has not demonstrated that her removal to Mexico would cause serious financial hardship to

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. Counsel submitted no evidence concerning country conditions in Mexico, therefore the applicant has not demonstrated that would experience hardship because of country conditions in Mexico.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. Counsel submitted a letter from Dr. oncerning surger received in Mexico. The letter indicated that the surgery was successful and without complications. The record contains no other evidence regarding the health o The applicant has not shown that would experience health-related hardship if the applicant were removed to Mexico.

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be "[t]he most important single [hardship] factor," and "[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).

Counsel stated that immediate and extended family mostly live in California, that Mr. is emotionally close to his siblings, nieces, and nephews, and that only family in Mexico are his parents and one sibling. These family ties relate to the hardship would face if he moved to Mexico to be with the applicant, however, counsel does not specify any potential effects or provide any documentation. Also, counsel does not address what effect the applicant's removal to Mexico would have o if he remained in the United States. In his declaration, stated that "[I]f Eva were forced to leave the United States and return to Mexico, I would lose everything. I would not be able to return to Mexico myself." As United States citizens and his children do not have to return to Mexico with the applicant. Separation from the applicant would cause hardship to however, his extensive network of family and friends in the United States could help him with the emotional effects of his wife's departure. Additionally and his children have liberal rights to travel outside the United States and can visit the applicant in Mexico.

The record contains a variety of letters in support of the applicant, and their children. These letters do not establish that would experience extreme hardship if the applicant is returned to Mexico.

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. The AAO recognizes that Mr. will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is fairly typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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(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 previous decision of the District Director is affirmed.

ORDER: The appeal is dismissed.