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U.S. Citizenship and Immigration Services

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DEC 21 2004

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [redacted]

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

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, Director
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 dismissed.

The record reflects that the applicant is a 33-year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the daughter of a U.S. citizen mother and lawful permanent resident father. She seeks a waiver of inadmissibility in order to remain in the United States with her family adjust her status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved relative petition filed on her behalf by her U.S. citizen mother.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen parents and denied the application accordingly.

On appeal, counsel contends that the applicant established that refusal of her admission will result in extreme hardship to her parents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted 1995 false claim to U.S. citizenship on the U.S.-Mexican border in an attempt to procure admission to the United States. *Decision of the District Director* (July 24, 2003) at 1. The applicant does not contest the district director's determination of inadmissibility. The question on appeal is whether she is eligible for a waiver of inadmissibility.

Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The applicant in the instant case is unmarried; the qualifying relatives for whose benefit the waiver may be granted are the applicant's U.S. citizen mother and lawful permanent resident father.

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 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 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," 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). *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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that counsel asserts the relevance of certain factors from cases and legal support that derive authority from statutes that governed the now-repealed form of relief known as suspension of deportation prior to April 1, 1997. *See, e.g., Matter of Anderson,* 16 I&N Dec. 596 (BIA 1978). Factors cited by counsel include, with respect to the applicant alien, age, length of residency in the United States, health condition, country conditions where the alien would be returned, financial status, other available means for adjusting status, immigration history, and position in the community." These factors generally constitute evidence that would tend to show that the applicant herself would undergo extreme hardship if removed from the United States. As noted above, hardship to the applicant herself is not a permissible consideration under the statute that governs the instant application for waiver. Counsel's contention that these factors should apply equally to the determination under section 212(i) of the Act is in error. "Cross-application" of extreme hardship standards between different benefits, such as suspension of deportation as it existed prior to April 1, 1997, and waivers under section 212(i) of the Act, is limited by the statutes under which eligibility is determined. *See*

Cervantes-Gonzalez, supra, at 565. Such cross-application of administratively and judicially developed factors is intended to foster consistency in interpreting substantially similar statutory requirements, but may not be used to undermine or otherwise alter the terms of the applicable statute. Therefore, the factors cited by counsel and above in this paragraph, with respect to the applicant alien, are generally not relevant to the determination under section 212(i) of the Act and may be taken into account, if at all, only as to how those factors contribute to the hardship faced by the qualifying relative, not the applicant herself, or in the exercise of discretion after statutory eligibility is established. If, in a particular case, any of the above factors are not present or not relevant to that determination, the law provides that they need not be considered. *Cervantes-Gonzalez, supra,* at 566 ("not all of the foregoing factors need be analyzed in any given case, we . . . apply those factors to the present case *to the extent they are relevant* in determining extreme hardship to the respondent's spouse.") (emphasis added).

The record reflects that the applicant's mother [redacted] a 58-year-old native of Mexico who became a naturalized U.S. citizen on September 5, 1996. She immigrated to the United States in 1978 or 1985 (the record is inconsistent) and became a temporary resident in the late 1980's. She has a third-grade education, and works as a seamstress. She filed a relative petition on behalf of the applicant and three of her other children as a lawful permanent resident in 1993. The other three children have already adjusted to lawful permanent resident status and reside in California. The applicant has one brother remaining in Mexico, for whom her mother has petitioned. The applicant states that she cares for the three children of her lawful permanent resident sister in the afternoons. The applicant's father is a 62-year-old native of Mexico, who immigrated to the United States in 1973 or 1985 (again the record is inconsistent), and later became a lawful permanent resident. He also has a third-grade level education, and worked as an agricultural laborer.

The applicant asserts that she assists her father financially because he is unable to work due to kidney and prostate problems and a hernia, which prevent him from sitting or standing for long periods of time. The record contains two final disability payment statements to the applicant's father, which state, "information in your Disability Insurance claim indicates that you are no longer disabled." *Statement of Disability Insurance* (October 3 and 22, 2002). The statements indicate that the "claim effective date" is July 11, 2002, and that supplemental medical certification is required to receive further benefits. No further documentation of the father's condition is in the record. The applicant also states that her mother has health problems affecting her liver and stomach, and also suffers from stress and depression. Medical documentation in the record shows that she presented at a hospital in October 2002 complaining of lower back pain and chest pain persisting for four days. *Omar Perez Medical Building, Patient Information Sheet* (Applicant's Exh. M) (October 29, 2002). Most of the handwritten notations are illegible. There is no further documentation of her health on the record. Medical documentation is on the record regarding the applicant's lawful permanent resident brother Hector, also mostly illegible, which appears to indicate that he was treated for complaints of abdominal discomfort and heartburn persisting for four months. The AAO notes that the doctor specifically notes that the patient "ask[ed] for INS letter because he could not find any job for the last year 'my sister/mother is support me I need this letter *[sic]*.'" *Thomas Magee, M.D. Patient Information Sheet* (September 30, 2003). The doctor also notes, "Patient able to work." A further letter from a medical doctor in Zapata, Mexico, indicates that Hector underwent surgery for a hernia, "with satisfactory evolution without presenting any complications." *Letter of Dr. Efrain Castrejon Cuenca* (October 15, 2003). There is no further documentation of his diagnosis, prognosis, or treatment plan.

A psychological evaluation was conducted to assess the possible impact of the applicant's deportation to Mexico. *Centro de Desarollo Personal, Psychological Evaluation* (October 11, 2003). The results indicated that the applicant's mother and father are experiencing significant stress and anxiety over the emotional and financial impact of the applicant's possible removal from the United States. The *Affidavit of Support* (Form I-864) filed by the applicant's mother and father indicate that their combined salaries for the most recent tax year (then, 1999), place them just above the 2000 poverty level for a household of five. The only financial documentation submitted with the appeal is a notice of rent increase addressed to the applicant's father.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents collectively or individually face extreme hardship if the applicant is refused admission. There is insufficient evidence to conclude that the applicant's parents suffer from serious health conditions that significantly impact the hardship they face if the applicant is removed from the United States, or that her brother's health condition is serious and relevant to the hardship that they face. The financial documentation is also insufficient upon which to base a finding of extreme hardship. The record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "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) (stating, "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. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.")

In this case, the record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relatives rises beyond common difficulties of separation or relocation to the level of extreme. The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under INA § 212(i), 8 U.S.C. § 1186(i).

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.