U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO DISTRICT OFFICE Date: DEC 30 2004

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 record reflects that the applicant is a 30-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 spouse of a U.S. citizen. She seeks a waiver of inadmissibility in order to remain in the United States with her husband and adjust her status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on her behalf by her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. The district director further found the applicant ineligible for a favorable exercise of discretion.

On appeal, counsel contends that the applicant's husband would experience extreme hardship if the applicant is refused admission in that he suffers from a serious medical condition that requires the assistance of the applicant. Counsel also states that the district director erred in finding that the applicant did not merit a favorable exercise of discretion. 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 having fraudulently presented a border crossing card belonging to another individual in an attempt to procure entry to the United States on January 29, 1997. *Decision of the District Director* (July 9, 2002) at 2. The applicant does not contest the district director's determination of inadmissibility. The question on appeal is whether she qualifies for a waiver.

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 sole qualifying relative for whose benefit the waiver may be granted in this case is the applicant's U.S. citizen husband.

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 record reflects that is a 42-year-old U.S. citizen born in New York, to parents of Cuban descent. His father is deceased, and his mother currently resides in Miami, Florida. He and the applicant married in 2001, in San Francisco. He has six children from prior relationships, aged 13-21, who live in Miami. The applicant has three children from a prior relationship, aged 8, 11, and 12, who live in Mexico with the applicant's mother. has no family or other ties to Mexico, other than the applicant and her family.

The record reflects that suffers from diabetes, high blood pressure, high cholesterol, and kidney stones. When he was being treated for a chronic wound in 2001, medical personnel noticed that he was in

"acute distress" and "clearly in diabetic ketoacidosis." He was transported by ambulance for emergency care. He now manages his diabetes with medication and has returned to work. His treating physician states, "[t]his condition is serious. He will require a companion ensure his safety at home. His wife is currently able to ensure that he not go into a coma due to his illness." *Letter to Daniel Roth, MD* (April 24, 2002). The record has not been updated since 2002.

orks as an executive chef. He states that his health insurance covers his own medical expenses as well as those of his children. He fears that if he relocates to Mexico, he will lose the health coverage he provides for his family. He also states that his mother also suffers from diabetes, which is controlled by medication. His annual salary was approximately $67,500 in 2001. It appears that he provides approximately 87% of the household income.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that faces extreme hardship if the applicant is refused admission, particularly if he remains in the United States. He has sufficient income and the ability to mitigate the effects of separation by visiting the applicant in Mexico, while remaining in the United States, retaining his health coverage, and taking care of his medical needs. Although a companion at home may be helpful to the applicant, there is no indication that cannot obtain all required medical and related care needed from his insurance company, and on this record it does not appear that the presence of his wife in the United States is crucial to his medical well-being. The record is silent as to the hardship would face if he relocated to Mexico to avoid separation from the applicant. Therefore, the applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). While CIS is not insensitive to situation, the record does not demonstrate that Mr. will face hardship greater than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse 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). Although suffers from diabetes and has been hospitalized on one occasion before he was aware of his condition, it appears from the record that his diabetes is manageable with medication, controlled diet, and exercise.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse 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.