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

[redacted]

FILE: [redacted] Office: SEATTLE DISTRICT OFFICE Date: NOV 04 2004

IN RE: Applicant: [redacted]

APPLICATION: 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 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 Interim District Director, Seattle, Washington, and 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 (U.S.) under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation in January 18, 1990. The applicant is married to a naturalized U.S. citizen, and she 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).

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the Immigration and Naturalization Service ("Service", now known as the Citizenship and Immigration Services (.CIS)) erred in fact and law in its August 26, 2003 denial of the waiver. Counsel cites to *Kurzban's Immigration Law Sourcebook* regarding the factors to be considered in the determination of the existence of extreme hardship. Counsel contends that the applicant's husband would face extreme hardship due to the applicant's inadmissibility. Counsel also discusses the hardship the applicant and her children might face if she is removed to Mexico.

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:

> **(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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

On appeal, counsel points out that the applicant has not one, but two U.S. citizen children. In the present case, however, in order for the applicant to qualify for a section 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to her U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen children will therefore not be considered in this decision.

Counsel asserts that CIS incorrectly applied *Matter of Kim*, 15 I&N Dec. 88, (BIA 1974) and *Matter of Marques*, 15 I&N Dec. 200, (BIA 1975) to the instant case. However, the principles derived from these cases relating to the factors to be taken into account in the determination of extreme hardship are pertinent to the application at hand. Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board of Immigration Appeals ("Board") has outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in section 212(i) waiver cases:

> The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted). The above factors are essentially the same as those counsel refers to in his discussion of *Kurzban's Immigration Law Sourcebook.*

In the present case, the record reflects that both the applicant and her husband are natives of Mexico. The applicant's husband, a naturalized U.S. citizen, has lived in the United States since 1978, and his mother and siblings also reside in the United States. The applicant has two U.S. citizen children, one of whose father is the applicant's husband. The applicant's husband has three other children from a previous relationship. A total of four children reside with the applicant and her husband.

Counsel asserts that if the applicant is removed from the United States, her husband will suffer financial hardship, because he will be unable to support his household and pay their joint debts without the applicant's financial contribution. The record contains no documentation relating to the applicant's husband's inability to modify any parts of the family budget, or the applicant's inability to earn money outside the United States in order to assist with family expenses. 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.

Counsel additionally contends that the applicant's husband would suffer emotional hardship if he remains in the United States while the applicant returns to Mexico, because it would be difficult for him to work and care for the four children living at home. The AAO notes that counsel also mentions on appeal that the mother of

two of the children living at home is very much involved with their lives, and the applicant's husband has close family members in the United States. The record, thus, does not indicate that the applicant's husband would necessarily be alone in his effort to care for his children. In addition, the applicant can choose to have her two children accompany her 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.