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

U.S. Citizenship and Immigration Services

[redacted]

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FEB 10 2005

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: FEB 18 2005

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 50-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 lawful permanent resident and mother of two U.S. citizen children. She seeks a waiver of inadmissibility in order to remain in the United States with her family and adjust 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 lawful permanent resident husband.

The district director found that the applicant had failed to establish extreme hardship to her lawful permanent resident spouse and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship would result to her husband if she is refused admission to the United States. In support of the appeal, counsel submits a brief and psychological assessment. 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 1994 fraudulent use of documents in an attempt to procure admission to the United States. *Decision of the District Director* (September 23, 2003). The applicant does not contest the district director's determination 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 AAO notes that the record contains references and documentation addressed to the hardship that the applicant's children would suffer if the applicant were refused admission. As noted above, section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes

extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant's children will therefore be taken into account only as it contributes to the overall hardship faced by the only qualifying relative in this case for whose benefit the waiver can be granted, the applicant's U.S. spouse.

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). 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 the applicant's husband [redacted] is a 41-year-old lawful permanent resident born in Mexico. He and the applicant married in Mexico in 1990. They have two children, aged 11 and 14 years. The applicant's father is deceased. The applicant's mother resides in Mexico and visits the couple in the United States regularly. [redacted] parents are deceased. He has six siblings. He indicates that two of them are lawful permanent residents, but there is no evidence in the file of their identities or immigration status.

The most recent financial documentation on file is from the 2000 tax year. That year, the applicant provided about 33% of the couple's annual household income of approximately $30,000. The applicant expresses concern that her husband would be unable to afford child care if she could not contribute to the household income. The applicant completed six years of primary school in Mexico. [redacted] works as a machine operator.

The statements filed by the applicant and her husband and counsel's brief emphasize the hardship that would be created if the children are separated from the applicant, and the effect of such separation on her husband. Counsel also indicates that the couple concluded that sending their children to Mexico is not "a viable option" due to projected diminished "educational and vocational opportunities" in Mexico. There is no supporting

documentation of country conditions or specific analysis of their impact on the applicant's husband in the record.

The psychological assessment report, completed by Catholic Charities and submitted by counsel, indicates that the applicant and her husband speak only Spanish and understand little English. The children speak Spanish in the home and English at school. The report corroborates the applicant's claims of emotional hardship she and her husband are undergoing due to the uncertainty surrounding her immigration status. The report does not contain an indication of medically significant depression or other medical conditions. The report states, "[t]his appears to be a highly functioning family without major problems."

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. 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).

The record is essentially silent as to the hardship the applicant's spouse would face if he relocated to Mexico, his country of birth, to avoid separation from the applicant. 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).

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.