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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 13 2006

IN RE: [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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application and it 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 pursuant to 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 to the United States by fraud or willful misrepresentation. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director concluded that the applicant had 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 October 5, 2004.

The record reflects that, on August 30, 1992, the applicant attempted to enter the United States at the Calexico, Port of Entry, by presenting a fraudulent U.S. passport. The applicant admitted that he had used his cousin's birth certificate in order to obtain the U.S. passport. On August 31, 1992, the applicant was convicted of illegal entry and fraud and misuse of identification documents in U.S. District Court. The applicant was sentenced to 180 days of jail. On April 11, 1996, the applicant married Adriana Gonzales Morones (Mrs. Uribe), who was a lawful permanent resident of the United States at the time of the marriage. On June 20, 1996, Mrs. Uribe became a naturalized citizen of the United States. On January 20, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On August 9, 1999, the applicant filed the Form I-601. The record shows that the applicant appeared at CIS' Los Angeles District Office on May 17, 2000. The applicant admitted that he had tried to enter the United States using a fraudulent U.S. passport and that after he was released from prison he was allowed to return to Mexico voluntarily. The applicant further testified that he re-entered the United States without inspection in 1993.

On June 16, 2004, the district director issued a request for further evidence to the applicant informing him of the need to file supporting evidence for the Form I-601. In response to that request, the applicant filed a letter from his U.S. citizen wife supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On October 5, 2004, the district director issued a notice of denial of the application as the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative.

On appeal, counsel asserts that the district director erred in not finding that the applicant had established extreme hardship to his wife. *Applicant's Brief,* November 2, 2004.

In support of these assertions, counsel submitted the above-referenced brief, a supplemental affidavit from Mrs. Uribe, an affidavit from the applicant, a birth certificate for the applicant's U.S. citizen son, letters of recommendation for the applicant, and pictures of the applicant and his family members. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of, and convictions for using, a fraudulent U.S. passport to attempt to enter the United States in 1992. Counsel does not contest the district director's determination of inadmissibility.

Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen son will not be considered in this decision.

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 at 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 statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena,* 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 2820 (BIA 1980).

The record reflects that, the applicant and his spouse have a two-year old son who is a U.S. citizen by birth. The applicant was born in Mexico and [redacted] a native of Mexico who subsequently became a lawful permanent resident, then a naturalized citizen of the United States. [redacted] resided in Mexico between 1974 and 1979. The record reflects further that the applicant [redacted] are in their 30's, and Mrs. Uribe has no health concerns.

Counsel asserts that [redacted] would suffer financial hardship if she were to remain in the United States without her husband. Counsel contends that [redacted] would not be able to financially support her and her son because she would be unable to care for the child during the day and because [redacted] is not currently employed. Counsel contends that, with the applicant removed from the United States, [redacted] would not be able to earn sufficient income. Counsel provides an affidavit from [redacted] to support this assertion. However, the record reflects that, between 1996 and 1998, [redacted] held a full-time job, from which she

derived a yearly income, which was sufficient to support her, the applicant and a foster-child for which she needed to care. Moreover, the record reflects that [redacted] resides in the vicinity of family members who may be able to support her financially and physically, by assisting her with her son. Counsel does not argue that [redacted] family members are not willing or able to assist in the support of her and her son.

Counsel asserts [redacted] would suffer emotional hardship if she remained in the United States and her husband returned to Mexico. There is no evidence in the record to suggest that [redacted] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Counsel contends that it would be an emotional hardship upon [redacted] raise a child by herself without the applicant. While it is unfortunate that [redacted] would essentially become a single parent and professional childcare may not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, according to the record, [redacted] family members, such as her parents, to support her emotionally in the absence of her husband.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Mexico in order to remain with the applicant. Counsel contends that [redacted] face extreme hardship because she no longer has any immediate family members in Mexico, it would be an emotional hardship to leave her family in the United States, she has never been to Mexico and the substandard economic situation in Mexico would not afford her and her son the educational, employment, medical and standard of living opportunities that they would have in the United States. However, [redacted] affidavit indicates that she and her son would not return to Mexico with the applicant. *See* [redacted] *Affidavit,* dated November 2, 2004. Finally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i). 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 an 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.