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

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[redacted]

FILE: [redacted] Office: PHOENIX Date: AUG 07 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, Phoenix, Arizona, 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 10, 2004.

The record reflects that, on April 7, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's lawful permanent resident spouse. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Phoenix District Office on July 25, 2003. The applicant admitted that she had entered the United States by presenting a fraudulently obtained Border Crossing Card (BCC) on August 17, 1994. The applicant testified that she had obtained the BCC and admission to the United States by presenting false employment verification documents. On August 2, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erred in finding that the applicant's spouse would not experience extreme hardship if the applicant were to be removed to Mexico and that he failed to consider the factors in the aggregate. *Form I-290B*, dated August 10, 2001. In support of the appeal, counsel only submitted the above-referenced Form I-290B. Counsel indicated he would file a brief and/or evidence with the AAO within 30 days. On May 15, 2006, the AAO informed counsel that he had five days in which to submit the brief and/or evidence with the AAO. At no time did counsel submit a brief and/or evidence to the AAO. The entire record was reviewed and considered in rendering a decision in this case.

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.
>
> . . . .
>
> (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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of false documentation to obtain a BCC and admission to the United States in 1994. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. 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. 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.

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 record reflects that, on October 17, 1985, the applicant married her husband, [redacted] (Mr. [redacted] who is native and citizen of Mexico. [redacted] became a lawful permanent resident of the United States in 1990. The applicant and her spouse have a 20-year old son who is a native and citizen of Mexico and who resides with them in the United States but has no legal status in the United States. The

record reflects further that the applicant and [redacted] are in their 50's and Mr. [redacted] may have some health concerns.

Counsel asserts that Mr [redacted] would suffer extreme hardship if he were to remain in the United States without the applicant. In his affidavit, Mr [redacted] states that he and his wife have enjoyed their life together and have built a better future for their family in the United States, being able to offer their son a better future as well.

Counsel submitted a psychological evaluation for the family indicating that the applicant and Mr. [redacted] have made their marriage and their son's future the sole purposes of their lives and that Mr. [redacted] is a "Type A hypertensive personality with a keen sense of fairness and justice" whose spirits can crash to dismal depths when his life either becomes unfair or unjust, which is in danger of happening due to the denial of the applicant's waiver.

Counsel submitted a letter from an accountant indicating that the applicant and her family currently live a very good life and that they are able to support themselves and can afford to pay for their son's college education. The letter states that if the family is broken up they would undergo tremendous hardship because [redacted] would have to pay the additional costs associated with a household for the applicant in Mexico which would prohibit [redacted] from being able to pay for his son's college education.

Financial records indicate that, in 2002 [redacted] earned approximately $32,375. The record shows that [redacted] earns sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. There is no evidence in the record to suggest that the applicant would be unable to find *any* employment in Mexico or that [redacted] salary is insufficient to support two households. Moreover, according to the record [redacted] and the applicant have family members in Mexico, such as their siblings, who may be able to support the applicant financially and physically, thereby easing [redacted] financial responsibilities. While it is unfortunate that Mr. [redacted] may not be able to pay for his son's college education, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. While it is unfortunate that Mr [redacted] may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

The psychological report was based on one meeting with the applicant, Mr. [redacted] and their son. The psychological evaluation does not indicate that Mr. [redacted] has received psychological treatment or evaluation other than during this appointment. The report can, therefore, be given little weight. There is no evidence in the record to confirm that Mr. [redacted] suffers from a mental or physical illness that would cause him to suffer hardship that is beyond those commonly suffered by aliens and families upon deportation.

Counsel, in the original brief accompanying the Form I-601, asserts that [redacted] would suffer extreme hardship if he were to return to Mexico with the applicant. However, in his affidavit, [redacted] does not indicate that he would return to Mexico with the applicant, whether he would suffer hardship if he returned to Mexico with the applicant or describe what type of hardship he would suffer if he were to return to Mexico with the applicant. Neither the psychological report nor the financial letter indicate that Mr [redacted] would return to Mexico with the applicant, whether he would suffer hardship if he returned to Mexico with the

applicant or describe what type of hardship he would suffer if he were to return to Mexico with the applicant. Counsel submits no documentation to support his assertion that the applicant's spouse would experience extreme hardship if he relocated to Mexico. 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 AAO is, therefore, unable to find that [redacted] would experience hardship should he choose to join his spouse in Mexico. Additionally, the AAO notes that, as a citizen of the United States, 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 and, as discussed above, [redacted] would not experience extreme hardship if he remained in the United States without the applicant.

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 Urban v. INS, Supra, 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 her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.