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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: DEC 15 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: Self-represented

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, Chicago, Illinois, 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of U.S. citizen children. He 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 his spouse and children.

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 March 26, 2004.

The record reflects that, on April 30, 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 U.S. citizen spouse. On July 25, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois, District Office. The applicant admitted that he had entered the United States by presenting documentation belonging to another in 1994. On October 3, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that he should be granted a waiver because his youngest daughter suffers from a disability and his wife is receiving assistance with her depression. *Applicant's Brief,* dated April 2, 2004. In support of these assertions, the applicant submitted the above-referenced brief and speech, language and motor skill assessments for his youngest child. 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 applicant's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission that he entered the United States by presenting documents belonging to another. The applicant does not contest the district director's finding of inadmissibility.

Hardship to the alien himself 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. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 August 8, 1998, the applicant married his spouse, [redacted] who is a native and citizen of the United States. The applicant and [redacted] have a seven-year old daughter and a four-year old daughter who are both U.S. citizens by birth. The record reflects that the applicant and [redacted] youngest daughter was born with a heart defect that was successfully repaired with no complications at the age of 4 months. The record also reflects that their youngest daughter was diagnosed with a mild delay in fine motor skills and language expression at the age of one. The record reflects further that the applicant and [redacted] are in their 30's, and [redacted] may have some health concerns.

The applicant contends that [redacted] would suffer extreme hardship if she were to remain in the United States without the applicant because it would be unfair for her to go through the family separation; he has quit his job so that his wife can work fulltime to avoid the stress at home; his wife had to terminate a third pregnancy due to toxicity; and her grandfather died from a heart attack in front of her, which has triggered depression for which she is receiving medical assistance. He further states that one of them needs to be at home to help their youngest daughter with her developmental, physical, occupational and speech therapy which she receives once a week and they cannot rely upon a baby-sitter because her special needs require the help and patience that only a parent can provide. In her affidavit, [redacted] states that she cannot imagine not having her husband with her or raising their children without him. She also states that it will be very hard and sad to be a separated family and even harder for her to raise their youngest daughter who has been diagnosed with a disability.

Financial records indicate that, in 2001, [redacted] earned approximately $16,517 and that her fulltime salary is approximately $19,488 per year. The record shows that, even without the assistance of the applicant, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. While it is unfortunate that Ms. [redacted] would essentially become a single parent, professional childcare may be an added expense and does 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. While it is unfortunate that [redacted] may have to lower her standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

The speech, language and motor skills documentation in the record indicates that, at the age of 11 months, the applicant's youngest daughter was placed on weekly occupational therapy for difficulties she had experienced with gross and fine motor skills due to muscle weakness (mildly hypotonic). The speech, language and motor skills documentation indicates that, at age 12 months, the applicant's youngest daughter was also placed on weekly speech/language therapy because she had exhibited a mild delay in receptive language skills and a moderate delay in expressive language. The documentation reflects that by age 17 months, the applicant's youngest daughter was demonstrating improvement in her language comprehension and motor skills, but that her language expression and motor strength required some work. The documentation reflected that an update and reevaluation of the applicant's youngest daughter's progress would be made 2 months prior to the submission of the applicant's appeal. The documentation does not indicate that the applicant's youngest daughter currently requires additional speech, language or motor skill therapy, whether it is necessary for the applicant's youngest daughter to be cared for by a parent rather than another individual, such as an alternative family member or a hired caretaker, or whether the applicant's absence would affect any speech, language or motor skill problems that may still exist.

While the applicant asserts that suffered a miscarriage and is undergoing medical assistance for depression, there is no evidence in the record to confirm that [redacted] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [redacted] would essentially become a single parent and her children would be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

The applicant contends that [redacted] would suffer extreme hardship if she were to accompany him to Mexico because there is no future for her and children in Mexico and there is no medical attention for her and the children in Mexico. There is no evidence in the record to suggest that [redacted] and the applicant would be unable to find employment in Mexico. There is no evidence in the record to confirm that [redacted] or the applicant's children suffer from a mental or physical illness for which they would be unable to receive treatment in Mexico. While the hardships faced by [redacted] with regard to adjusting to a new culture, economy and environment are unfortunate, they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children are 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 she 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 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. § 1186(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.