U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

142

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:

[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, 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 lawful permanent resident and the mother of U.S. citizen children. 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 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 January 24, 2005.

The record reflects that, on May 18, 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. On October 1, 2003, the applicant appeared at Citizenship and Immigration services' (CIS) Chicago, Illinois, District Office. The applicant admitted that she had entered the United States by presenting a lawful permanent resident card belonging to another in 1992. On February 11, 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, based on her equities and the extreme hardship to her family members, the applicant's waiver should be approved. *Applicant's Brief,* dated February 17, 2005. In support of these assertions, counsel submitted the above-referenced brief, affidavits from the applicant's spouse and children, medical documentation for the applicant's child, tax records, family photographs, letters of recommendation and copies of the applicant's children's school records. 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 she entered the United States by presenting a lawful permanent resident card belonging to another. Counsel does not contest the district director's finding 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.

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 February 3, 1992, the applicant married her spouse, [redacted] who is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant and [redacted] have a 13-year old daughter and a 12-year old son who are U.S. citizens by birth. The record reflects that the applicant and [redacted] son suffers from migraines. The record reflects further that the applicant and [redacted] are in their 30's, and there is no evidence that [redacted] has any health concerns.

Counsel contends that the applicant's children would suffer extreme hardship if they were to remain in the United States without the applicant or accompany the applicant to Mexico. 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.

Counsel asserts that [redacted] would suffer extreme hardship if he were to remain in the United States without the applicant because they have two children whom the applicant helps raise, the applicant runs the household and provides support to [redacted] both emotionally, physically and in dealing with household finances, Mr. [redacted] would be unable to provide the required attention to his son who suffers from migraines, he would have to support the applicant in Mexico, and without the applicant's help at home [redacted] would have to pay for childcare and may have to cut back his work hours, which are numerous, in order to provide care to his children. In his affidavit, [redacted] states that life is stressful and his wife eases that stress by caring for their children, taking them to their regular pediatrician appointments and managing the money that he earns and he depends on her emotionally. [redacted] states the applicant helps him with his responsibilities and helps him not to feel depressed when he talks to her. He states that his son has migraines which require a lot of attention from the applicant and that both children are attached to the applicant. [redacted] states that there would be no one to care for his home while he is working if the applicant was to return to Mexico and he often feels overwhelmed by his daily responsibilities. [redacted] states that without the applicant he would be forced to deal with all the stress of work and family, which would negatively affect his relationship with his children.

Financial records indicate that, in 2004, [redacted] earned approximately $39,480. There is no evidence in the record that the applicant would be unable to obtain *any* employment in Mexico, which could ease [redacted] financial responsibilities. The record reflects that the applicant has family members in Mexico, such as Mr. [redacted] mother, who may be able to provide her with financial and physical assistance, which could ease Mr. [redacted] financial responsibilities. The record shows that, even if he had to support the applicant in Mexico, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. While it is unfortunate that [redacted] would essentially become a single parent, professional childcare may be an added expense and 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. Counsel asserts that [redacted] works many hours, and, even with childcare, he may need to decrease his work hours in order to care for his children in the applicant's absence which would decrease is income or cause him to have to change jobs. While it is unfortunate that [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 medical documentation in the record indicates that [redacted] son has been treated for migraines and that he currently takes Motrin to control them. The medical documentation does not indicate a prognosis for Mr. [redacted] son or that [redacted] son requires additional attention due to his migraines. Counsel asserts that the migraines would be aggravated by the loss of his mother. However, the medical documentation does not indicate whether it is medically necessary for the applicant's son to be cared for by a parent rather than another individual, such as an alternative family member or a hired caretaker or that the applicant's absence would affect his migraines.

There is no evidence in the record to suggest that [redacted] suffers from a physical or mental illness that would cause him 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 his 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.

Counsel and [redacted] do not assert that [redacted] would suffer extreme hardship if he were to accompany the applicant to Mexico. Therefore, the AAO cannot find that [redacted] would suffer extreme hardship if he were to accompany the applicant to Mexico. Additionally, the AAO notes that, as U.S. citizens or lawful permanent residents, 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 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 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 lawful permanent resident 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.