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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: JUN 07 2006

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 15, 2004.

The record reflects that, on January 5, 1996, at the San Ysidro, California, Port of Entry, the applicant applied for admission into the United States. The applicant presented an I-551 Lawful Permanent Resident Card that belonged to another, under the name [redacted] The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud. The applicant failed to provide her true name. Consequently, on January 16, 1996, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) under the name [redacted] The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to May 27, 1999, the date on which she gave birth to her daughter in Los Angeles, California.

On June 5, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On March 13, 2003, the applicant appeared at the Citizenship and Immigration Services' (CIS) Los Angeles District Office. The applicant admitted that she had attempted to procure admission to the United States by presenting a lawful permanent resident card belonging to another. On March 26, 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 not considering the cumulative effects of the different hardships the applicant's spouse would suffer in determining whether the applicant had established that a qualifying family member would suffer extreme hardship. *See Applicant's Brief,* dated March 23, 2004, resubmitted on November 15, 2004. In support of his contentions, counsel submitted the above-referenced brief and copies of documents previously submitted. The entire record was reviewed 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.

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

> (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) of the Act on the applicant's admitted attempt to procure admission into the United States by presenting a lawful permanent resident card belonging to another in 1996. 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.

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 April 24, 2001, the applicant married her spouse [redacted] (Mr. [redacted], Mr. [redacted] is a native of Mexico who became a lawful permanent resident of the United States in 1989 and a naturalized U.S. Citizen in 1999. The applicant has a 13-year-old son from a previous relationship, who is a U.S. citizen by birth. The applicant and Mr. [redacted] have a six-year-old daughter who is a U.S. citizen by birth. The record reflects further that the applicant is in her 30's, Mr. [redacted] is in his 40's, and Mr. [redacted] and the children do not have any health concerns.

Counsel asserts that the applicant's children would suffer extreme hardship if they were to remain in the United States without their mother or if they were to return to Mexico in order to remain with their mother. The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers under section 212(i) of the Act. 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. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect Mr. [redacted] the only qualifying relative.

Counsel asserts that Mr. [redacted] would suffer emotional and financial hardship if he were to remain in the United States without the applicant. Counsel contends Mr. [redacted] relies on the applicant for his and the children's emotional and spiritual support. Counsel contends Mr [redacted] would suffer financially because he would be forced to visit the applicant in Mexico, which would deplete his income and require him to take time off of work. Counsel contends Mr. [redacted] would be worried about the applicant because she is a woman of a certain age with no family, relocating to Mexico, and because Mexican authorities do nothing to assist or help individuals against the violence in Mexico.

Financial records indicate that Mr. [redacted] is the primary source of income for the family. In 2002, tax records indicate Mr. [redacted] contributed approximately $20,262 to the household income. The AAO notes that a Form 1099-R indicates that Mr. [redacted] also receives income from [redacted] The record reflects that Mr. [redacted] has family members in the United States, such as his siblings, who may be able to support him financially in the absence of the applicant. The record shows that, even without assistance from family members or the distributions from the trust company, Mr. [redacted] earns 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 Mr. [redacted] would essentially become a single parent and 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. The record reflects that the applicant has family members in Mexico, such as her parents, who may be able to assist her financially and emotionally and thus ease Mr. [redacted] concerns about her relocation to Mexico. The country condition report in the record indicates that there is a continued attempt to intimidate human, political and social rights organizations in Mexico, however, it does not indicate that an individual such as the applicant would be subject to such threats or that the authorities are unwilling to assist those who have received such threats. The

record contains no evidence to suggest that the applicant would be subject to the lack of protection and violence counsel claims Mr. [redacted] is worried about. Counsel does not assert, and there is no evidence in the record to suggest, that Mr [redacted] or the children suffer from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, Mr. [redacted] has family members to support him emotionally in the absence of the applicant.

Counsel contends that Mr. [redacted] would suffer extreme hardship if he were to return to Mexico with the applicant. Counsel contends the applicant and Mr. [redacted] would be unable to earn sufficient income to support the family due the economy of Mexico. Counsel does not assert, and there is no evidence in the record to suggest, that Mr. [redacted] suffers from a physical or mental illness that would restrict his ability to work and support his family. The record reflects that the applicant has family members such as her parents, and Mr [redacted] has family members such as his mother, in Mexico, who may be able to support them financially and emotionally. Moreover, while the hardships Mr. [redacted] faces are unfortunate, the hardships he faces with regard to adjusting to a lower standard of living and separation from friends and family, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as citizens of the United States, 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.

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 Mr. [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 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.