U.S. Department of Homeland Security
20 Mass, Rm. A3042,
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 17 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 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 U.S. citizen. 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.

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 25, 2004.

The record shows that, on August 6, 1993, the applicant was apprehended by border patrol at a checkpoint on Highway 86 near Salton City, California. The applicant presented a fraudulent I-94 Emergency Parole (Form I-94), stating that he had used it to enter the United States at the Calexico, California, Port of Entry. The applicant later admitted that, approximately 5 hours earlier, he had entered the United States at Calexico, California, Port of Entry by presenting a valid I-586 Border Crossing Card. The applicant also had in his possession an expired I-444 Mexican Border Visitors Permit (Form I-444) that belonged to his brother and a fraudulent social security card. The applicant admitted that, on July 22, 1993, he had traveled from Mexicali, Mexico to Bakersfield, California by presenting the Form I-444. The applicant also admitted that he had procured the fraudulent Form I-94 in a liquor store in Mexicali, Mexico for $500 as he wanted to attempt to pass the checkpoint with the fraudulent Form I-94 because he knew that he could not pass through the checkpoint without a permit. Finally, the applicant admitted that he had utilized the fraudulent social security card to obtain employment in Bakersfield, California. The applicant voluntarily returned to Mexico.

On April 23, 2001, the applicant married his spouse, [redacted], a U.S. citizen by birth. On April 30, 2003, 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. The applicant appeared at CIS' Los Angeles District Office on June 29, 2004.

On June 29, 2004, the district director issued a notice to the applicant informing him of the need to file Form I-601. On September 27, 2004, 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 October 25, 2004, the district director issued a notice of denial of the application because the applicant had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, the applicant contends that the district director erred in finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by fraud or willful misrepresentation. *See Applicant's Affidavit* dated November 26, 2004. In support of the appeal, the applicant submitted only his above-referenced affidavit. 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.

The district director found that, because the applicant had entered the United States by presenting the fraudulent Form I-94 and obtained employment in the United States by presenting the fraudulent social security card, he was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant contends that he did not enter the United States by presenting the fraudulent Form I-94 and that he was unaware at the time he presented the Form I-94 and social security card to the immigration officers at the checkpoint that they were fraudulent because the person from whom he obtained them indicated he worked for immigration. The AAO agrees that the applicant did not enter the United States by presenting the fraudulent Form I-94. However, the Record of Deportable Alien (Form I-213) indicates that the applicant was aware that both the Form I-94 and the social security were either fraudulent or fraudulently obtained. At the time the applicant entered the United States by presenting the I-586 Border Crossing Card he intended to reside and work in the United States without authorization. The applicant admitted to presenting himself for admission as a visitor to the United States on August 6, 1993, at which time he made a willful misrepresentation of a material fact by failing to indicate that he was returning to the United States to engage in unauthorized employment and residence in the United States. The AAO finds that the applicant was an intending immigrant that willfully misrepresented himself as a nonimmigrant by presenting a nonimmigrant permit.

Additionally, the Form I-213 indicates that the applicant admitted to procuring admission into the United States by presenting the Form I-444 belonging to another person on July 22, 1993. The AAO finds that, on July 22, 1993, the applicant procured admission to the United States by fraud or willful misrepresentation.

The AAO finds that the applicant procured benefits under the Act by fraud or willful misrepresentation of a material fact.

Finally, while the applicant was not seeking admission into the Untied States, he did present the fraudulent Form I-94 to an immigration officer in order to pass through a checkpoint and remain in the United States. The AAO finds that, by presenting the fraudulent Form I-94, the applicant attempted to procure benefits under the Act by fraud or willful misrepresentation of a material fact.

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.

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.

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 the applicant and his spouse do not have any children. The record reflects further that the applicant is in his 30's, [redacted] is in her 20's, and [redacted] does not have any health concerns.

The applicant, in his affidavits, contends [redacted] would suffer hardship if she were to remain in the United States without him because he has "a permanent job and [he is] the only one able to provide the necessary household income . . . not having a job will cause a tremendous harm to the household and towards our family." Financial records indicate that [redacted] had been employed outside the home during 2001 and even supported the family during 2003 while the applicant was unemployed. There are no financial records to indicate how much income the applicant or [redacted] derive, either presently or in the past. There is also no evidence in the record to indicate the costs associated with the applicant and [redacted] household. Therefore, the AAO is unable to find that [redacted] would be unable to support herself without the additional income of the applicant. The applicant does not assert, and 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. Furthermore, it appears that [redacted] has family members in the immediate vicinity, such as her mother and father, who may be able to provide her with emotional and financial assistance in the absence of the applicant.

The applicant, in his affidavits, contends that [redacted] would suffer hardship if she accompanied him to Mexico because "if she leaves the country, her family, friends, job, school and standard of living might not be extreme hardship for the immigration, but for us is a radical extreme hardship." The applicant does not assert, and there is no evidence in the record to suggest that the applicant and [redacted] would be unable to find any employment in Mexico. The applicant does not assert, and 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. While the hardships [redacted] faces are unfortunate, the hardships faced by [redacted] 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 record reflects that the applicant has family members in Mexico who may be able to provide emotional and financial assistance. 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. § 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.