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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 26 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 attempted 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 August 9, 2004.

The record reflects that, on January 26, 1997, the applicant applied for admission to the United States at the San Ysidro Port of Entry. **The applicant presented a Mexican passport with a U.S. visa under the name '[redacted]." The applicant admitted that she had purchased the passport and visa and gave** another false name as her true identity. The applicant was charged as an imposter under the name '[redacted] On February 1, 1997, the applicant was allowed to withdraw her application for admission and was returned to Mexico. 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 October 27, 1997, the date on which she married her spouse, who was a lawful permanent resident of the United States at the time, in Watsonville, California. On June 16, 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 spouse. The record shows that the applicant appeared at CIS' Los Angeles District Office on April 20, 2004. The applicant testified that she attempted to enter the United States by presenting a fraudulent Mexican passport and U.S. visa in 1997.

On May 14, 2004, the district director issued a request for further evidence to the applicant informing her of the need to file the Form I-601 with supporting documentation. On June 18, 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 August 8, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because she had attempted to procure admission to the United States, by fraud or misrepresenting a material fact, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director failed to consider the applicant's spouse's affidavit in determining whether he would experience extreme hardship upon the applicant's removal from the United States. *Form I-290B*, dated September 7, 2004. Counsel also contends that the district director utilized impermissible case law in determining whether the applicant's spouse would suffer extreme hardship. In support of her contentions, counsel submitted a brief, a new affidavit from the applicant's spouse, a psychological evaluation, country conditions for Mexico and documentation previously submitted. 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.
>
> (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 use of a fraudulent passport and visa to attempt to procure admission into the United States in 1997. 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. 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 their father, 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. *Supra.* 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's husband, [redacted]s a native of Mexico who became a lawful permanent resident of the United States in 1990 and a naturalized U.S. citizen in 2003. The applicant and her spouse have a 12-year old daughter, a seven-year old daughter and a five-year old son, who are all U.S. citizens by birth. The record reflects further that the applicant and [redacted] are in their 30's and that [redacted] has no current health concerns.

Counsel contends that the district director did not consider [redacted] affidavit in determining whether he would suffer extreme hardship because the district director's decision stated "there is no supporting evidence that your removal from the United States would result in extreme hardship to you qualifying family member." However, the district director's decision went on to explain, "mere separation and financial difficulties, and economic detriment in the absence of other substantial equities do not constitute an extreme hardship", indicating that while [redacted] affidavit described separation and financial difficulties and economic detriment, it did not prove that he would suffer extreme hardship. The district director's decision noted that there was no evidence to support finding that [redacted] would suffer *extreme* hardship, not that there was no evidence submitted with the Form I-601.

Counsel contends that the district director erred in citing to and comparing the applicant's case to cases involving other statutes under the Immigration and Nationality Act. Counsel specifically cites the district director's use of *Matter of Ngai,* 19 I&N Dec. 245 (BIA 1984), and *Santana-Figueroa v. INS*, 644 F. 2d 1354 (9th Cir. 1981), as precedent inappropriately cited by the district director. However, while they involve other sections of the Act, the district director correctly cites these precedents, because they set forth factors and findings in regard to "extreme hardship." While the applicant may not be able to utilize extreme hardship to her children or to herself in qualifying for a section 212(i) waiver, these precedents offer incite into what type or combination of hardships would constitute extreme hardship to the applicant's spouse.

in his affidavits, asserts that he will suffer extreme emotional, economic, and physical hardship if the applicant is forced to return to Mexico. [redacted] states he will suffer hardship because the applicant is the one who cares for their children, he would be devastated if she were not with him, he would miss his son, which is the only child that the applicant would take with her to Mexico, and it would be a financial strain to maintain two households. [redacted] worries that his wife and son will be unsafe in Mexico because of the high crime rate, the human rights abuses committed by the police and

government, his wife would be unable to find employment in Mexico because of the high unemployment rate, and his wife would become sick because of the high levels of pollution and diseases affecting people in Mexico.

There is no evidence in the record that [redacted] would suffer financial hardship if he were to remain in the United States while the applicant returned to Mexico. [redacted] is the sole financial support for the family. Financial records indicate that, in 2003, [redacted] contributed approximately $67,616 to the household income. The record shows that [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. 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.

In the psychological evaluation, [redacted] asserts that he had a seizure disorder for which he has been treated in the past and no longer experiences because he thinks his wife's presence stabilized his life. However, the record contains no evidence to suggest that [redacted] has ever been treated for such a disorder, what the diagnosis was, what the prognosis was, or whether the applicant's presence has any bearing on such a disease. In the psychological evaluation, [redacted] states he is concerned he will not be able to adequately care for his eldest daughter who has special needs due to a learning disability. However, the record contains no evidence to suggest that [redacted] eldest daughter has ever been treated for a learning disability, what the diagnosis was, what the prognosis was, or whether the applicant's presence has any bearing on such a learning disability. The psychological evaluation indicates [redacted] "is depressed and openly reporting the symptoms, including anxiety . . . what he perceives to be most problematic, the emotional stress of separating himself and his children from their mother, which would be traumatic for all family members . . . one can expect that if his wife were deported, he may spiral into a deeper depression where he may not be able to remain gainfully employed." The AAO notes that the psychologist found that there was "no previous history of psychiatric treatment and evaluations", there were "no elevations that would be considered to indicate that presence of clinical psychopathology" and "he is a person who generally is resilient when challenged with life's problems," indicating that [redacted] does not suffer from a mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. In addition, the report was based on a single meeting with [redacted] The report can, therefore, be given little weight.

As discussed above, there is no evidence in the record to suggest that [redacted] the applicant, or his children, suffer from a mental or physical illness that would cause [redacted] to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. The record reflects that the applicant has family, such as her mother, in Tepic, Mexico and that [redacted] parents reside in Michoacan, Mexico. The record contains no evidence to suggest that these family members would be unable to assist the applicant emotionally and financially to ease [redacted] concerns. Additionally, the record contains no evidence to suggest that crime rates, human rights abuses, pollution or diseases in the areas in which the applicant and [redacted] family members reside are greater than that experienced in California. Additionally, the record reflects that [redacted] has family members in the United States, such as his siblings, who may be able to provide support in the absence of the applicant.

In his original affidavit, [redacted] asserted "if my wife returned to Mexico or if I returned there with our three American born children . . . I do not know what I would do . .. my children and I would suffer terrible (sic) from being up-rooted from our family and friends . . . what my pain and anguish would be at seeing my children go through a traumatic change like that . . . I left Mexico when I was 16 . . . when I travel to Mexico I have stopped at places where I could ask for work and the employees get paid the equivalent to $60.00 Dls weekly, I asked myself what kind of life I would give to my three American born children." While the hardships [redacted] faces are unfortunate, the hardships faced by him with regard to adjusting to a lower standard of living, separation from friends and family, and decreased opportunities for his children are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Finally, 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.

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 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.