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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: DEC 13 2007

IN RE: Applicant: [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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 waiver application was denied by the District Director, Chicago, Illinois and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). In addition, the applicant was found inadmissible under 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 a visa and admission into the United States by fraud or willful misrepresentation. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated December 8, 2005.

In support of the appeal, counsel submitted a brief, dated February 3, 2006. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result

in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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

(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(i) of the Act states, in pertinent part, the following:

(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 immigrant 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...

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that at the applicant's I-485, Adjustment of Status interview on March 1, 2005, the applicant provided sworn testimony that he had entered the United States without inspection in March 1999 and had departed the United States voluntarily in November 2003. As the applicant had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the district director correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that at the applicant's I-485, Adjustment of Status interview on March 1, 2005, the applicant provided sworn testimony that he had misrepresented himself at the time of his visitor visa application at the U.S. Embassy in Mexico City, Mexico in February 2004 by failing to disclose that he had previously been in the United States. In addition, the applicant, upon obtaining the visa by misrepresenting a material fact, presented said visa to the port of entry officer and was subsequently admitted to the United States in February 2004. The applicant is therefore inadmissible to the United States for making a willful misrepresentation of a material fact in order to procure a visa and subsequent admittance into the United States.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Unlike waivers under section 212(h) of the Act, sections 212(i) and 212(a)(9)(B)(i)(II) do not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and any hardship to the applicant or their child cannot be considered, except as it may affect the applicant's spouse. 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 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, 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. 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 held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The applicant's spouse, a U.S. citizen, first states that she will suffer emotional hardship were the applicant removed from the United States. As she states, "...If I look back to the time before [redacted] [the applicant] entered my life, it feels like a different lifetime. Not only was my lifestyle completely different, but so was my direction and who I was as a person. [redacted] has changed my life completely. I feel he is everything that I could ever want. And now that we have finally found each other, it would be a corruption of the forces that be to break us up, as they are the ones that brought us together..." *Letter from* [redacted] dated April 4, 2005.

There is no documentation establishing that the applicant's spouse's financial, emotional or psychological hardship is any different from other families separated as a result of immigration violations. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

While the applicant's spouse may need to make other arrangements with respect to her and her child's continued physical, emotional and financial care, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse. Moreover, the record indicates that the applicant's spouse has an extensive network of family members, including her mother, step-father, grandmother, siblings, aunts, uncles and cousins residing in Iowa; it has not been established that they would be unable to assist the applicant's spouse in any way should the need arise, as they are driving distance from the applicant's spouse, as stated by counsel in his brief.

The applicant's spouse further states that she will suffer financial hardship were the applicant removed from the United States. As stated by counsel, "...In Carlos's [the applicant's] absence, Angela [the applicant's spouse] had great difficulty holding down her job, finding day care for her son, and paying all of their expenses. Angela's job was threatened, she had no reliable day-care and no-one to whom she could turn living near her in Chicago..." *Brief in Support of Appeal*, dated February 3, 2006. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the applicant's spouse may need to make alternate arrangements with respect to her financial situation, it has not been established that such arrangements would cause her extreme hardship. Moreover, counsel provides no evidence to substantiate that the applicant, currently working in the restaurant industry, would not be able to find gainful employment were he to relocate to Mexico, or any other country of his choosing, thereby assisting the applicant's spouse with the household expenses. Finally, it has not been documented that the applicant's spouse is unable to obtain full-time employment that would permit her to support herself and her child were the applicant unable to do so. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant to reside outside of the United States based on the denial of the applicant's waiver request. In this case, counsel for the applicant states that "...[redacted] [the applicant] does not come from a wealthy family..[redacted] [the applicant's spouse] has visited Mexico on a few occasions, and has never had a good experience. [redacted] is incredibly afraid of having to live in Mexico. She is afraid for her own safety, her son's safety, her family's health, their financial well being, and devastated about the prospect of being thousands of miles away from her family in Iowa..." *Brief in Support,* at 7.

Counsel has not provided supporting documentation to establish that the applicant and/or the applicant's spouse would be unable to obtain gainful employment in Mexico. Moreover, counsel has not provided evidence that the health and education system in Mexico would be problematic for the applicant's spouse; counsel has provided general articles about country conditions in Mexico but counsel has not established a specific correlation between the articles submitted and the conditions the applicant's spouse would encounter in Mexico. In fact, as stated by the applicant, "...I was born and raised in Mexico City...my childhood was a happy one...I have many fond memories of my childhood and adolescence [in Mexico]...My brothers and I were educated. We are not rich, but we never went hungry or homeless..." *Affidavit and translation from* [redacted] dated May 20, 2005. Finally, it has not been established that the applicant's spouse would experience extreme hardship based on a separation from her relatives that reside in Iowa. As the record indicates, the applicant has a mother and two siblings that reside in Mexico who would be able to assist the applicant's spouse and moreover, the applicant's spouse would be able to return to Iowa to visit her relatives at any time due to her U.S. citizenship.

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 will face extreme hardship if the applicant's waiver request is denied. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.