identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[redacted]

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

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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the mother of three 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 May 25, 2004.

The record reflects that, on January 18, 2000, 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 her spouse. On July 19, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois, District Office. The applicant testified that, in 1995, she attempted to procure admission to the United States by presenting a fraudulent Border Crossing Card (BCC). The record reflects that, on February 28, 1995, the applicant applied for admission at the Hidalgo, Texas, Port of Entry, by presenting a BCC under the name "[redacted]" On July 26, 2002, 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's decision failed to give proper weight to the fact that the applicant's spouse is a U.S. citizen, he and the applicant have three U.S. citizen children, the applicant and her husband own a house, and the applicant's husband would suffer extreme hardship. *See Form I-290B and Applicant's Brief,* dated June 28, 2004. In support of his contentions, counsel submitted the referenced brief, an updated affidavit from the applicant's spouse, financial documentation and copies of documentation previously provided. 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.
>
> . . . .
>
> (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)(i) of the Act on the applicant's admission to obtaining entry into the United States by fraud in 1995. On appeal, 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 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.

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 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 July 24, 1993, the applicant married her spouse, [redacted]. Mr. [redacted] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1999. The applicant and Mr. [redacted] have a 12-year old son, a ten-year old son and a six-year old

son who are all U.S. citizens by birth. The record indicates that the applicant is in her 30's, Mr. [redacted] is in his 40's, and there is no evidence in the record to suggest that Mr. [redacted] or the applicant's children have any health concerns.

Counsel asserts that the applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The AAO notes that counsel refers to a section of the Act that does not correspond to the applicant's section 212(a)(6)(C)(i) ground of inadmissibility. All representations made by counsel in regard to extreme hardship will, therefore, be considered under section 212(i) of the Act.

On appeal, counsel asserts that Mr. [redacted] will suffer extreme hardship if the applicant is denied a waiver application because he would be unable to maintain his current standard of living since the majority of his current salary is already spent on household expenses, which includes a mortgage. Counsel asserts that if Mr. [redacted] children accompany the applicant to Mexico he would lose all contact with children, in whose lives he is very active, except for his one week per year of paid vacation. Mr. [redacted], in his affidavits, asserts that if the applicant is not allowed to remain in the United States his family would be wrecked and he would lose his marriage. He states that he would be unable to see his wife apart from the one week during which he has a paid vacation and he would be unable to care for the children himself due to his work hours and would be forced to hire someone to take care of them. He states that he currently earns $22,000 per year and that his yearly expenses, including a mortgage, are $17,000. He states that he would be unable to send money to the applicant in Mexico to support her and the children and still meet his current expenses in the United States. He states that he would lose his house and would not even have money sufficient to visit Mexico.

Financial records indicate that, in 2004, Mr. [redacted]s salary was approximately $22,000 per year. There is no evidence in the record to indicate that the applicant would be unable to obtain *any* employment that would provide a source of income that would ease Mr. [redacted] financial obligations. While Mr. [redacted] asserts that the applicant does not have any family members in Mexico, the Biological Information Sheet (Form G-325) indicates that the applicant has family members in Mexico, such as her parents, who may be able to provide financial and physical support that could ease Mr. [redacted] financial obligations. The record shows that, even without assistance from family members or the applicant, Mr. [redacted] has, in the past, earned more than sufficient income to exceed the poverty guidelines for his household in the United States. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. While it is unfortunate that, if the children were to remain in the United States, 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 removal. While Mr. [redacted] may have to lower his standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Mr. [redacted] if he had to support himself and a household in Mexico without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that Mr. [redacted] or his children have a physical or mental illness that would cause Mr. [redacted] to suffer hardship beyond that commonly suffered by aliens and families upon removal. If Mr. [redacted] and the children remain together in the United States, he will not only be separated from the applicant but will witness his children's separation from the applicant. If the children accompany the applicant to Mexico, Mr. [redacted] will be separated from the applicant and his children. While the AAO

acknowledges the hardship to Mr. [redacted] in either eventuality, neither is beyond that commonly suffered by aliens and families upon removal.

Counsel asserts that Mr. [redacted] would suffer extreme hardship if he accompanied the applicant to Mexico because he will be in worse shape financially and emotionally due to abandoning the country in which he has chosen to reside. Mr. [redacted], in his affidavit, states that he does not want to return to Mexico because the United States is the country in which he has chosen to reside, he would not be able to provide his children with a good education, he has not even visited Mexico since 1994, and he would be forced to leave everything behind including his family, friends and community. Mr. [redacted] also states that the children will be faced with different customs and language, which will cause traumatic damage to their emotional state

Having analyzed the hardships Mr. [redacted] and his counsel claim he will suffer if he were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record to suggest that the applicant and Mr. [redacted] would be unable to obtain any employment in Mexico. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir.1986). There is no evidence in the record to suggest that Mr. [redacted] or the children suffer from a physical or mental condition that could not be treated in Mexico. While the hardships faced by Mr. [redacted] with regard to the children adjusting to a new culture and language, and the family adjusting to the economy, environment, separation from friends and family and an inability to obtain opportunities that are available to them in the United States are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Additionally, 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 and, as discussed above, Mr. [redacted] would not experience extreme hardship if he remained in the United States without the applicant.

Counsel contends that Mr. [redacted] situation is similar to the family in *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002), in that he would become the sole provider for the family if the applicant is removed to Mexico. As such, counsel asserts that this situation is sufficient proof of extreme hardship. *Matter of Recinas* is not applicable to the instant case. In *Matter of Recinas* the applicant, who was to be removed from the United States, was the sole financial support for six U.S. citizen children who had no other means to support themselves. In the instant case, Mr. [redacted] is not the applicant who is to be removed, and the applicant in the instant case is not the sole means of support for the U.S. citizen children. Moreover, there is no evidence that Mr. [redacted] would be unable to support himself and his family if he were to remain in the United States or return to Mexico with the applicant. Neither counsel nor Mr. [redacted] indicate that he would be unable to earn *any* income if he were to return to Mexico.

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 has 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 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.