U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 18 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:

SELF-REPRESENTED

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, Los Angeles, California, and 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 (U.S.) 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 making a false claim to U.S. citizenship in an attempt to gain entry into the United States on June 13, 1993. The applicant is married to a U.S. citizen, has two U.S. citizen children and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that there was no evidence in the record to support a finding that the applicant's spouse would experience any extreme hardship as a result of the applicant's removal. The application was denied accordingly. *Decision of the District Director*, dated March 22, 2005.

On appeal, the applicant states that her spouse and family would suffer extreme emotional, financial and psychological hardship as a result of her waiver application being denied. She also submits additional evidence. *Form I-290B*, dated April 12, 2005.

The record indicates that on June 13, 1993 the applicant made a false claim to U.S. citizenship in an attempt to gain entry into the United States.

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

> (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 provides that:

> (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.

A section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien herself experiences or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse.

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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The record indicates that the applicant and her spouse have two sons, ages 14 and 11. In his declaration, the applicant's spouse states that the applicant is a great source of emotional and psychological support for him and the children. The children have lived in the United States and attended school in the United States their entire lives. The AAO notes that although the applicant has submitted evidence to show that her two sons would face extreme hardship as a result of relocating to Mexico, hardships to the applicant's children are not considered in section 212(i) waiver proceedings unless the applicant shows these hardships would cause the applicant's spouse to suffer extreme hardship. The current record does not include any assertions and/or documentation to show that the applicant's spouse would suffer extreme hardship as a result of his children's hardship. Therefore, the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of relocating himself and his two adolescent sons to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he is under constant stress and depression since the applicant's waiver application was denied. In addition, the record indicates through doctor's notes and teacher's letters that the applicant is the primary caretaker for the couple's children while the applicant's spouse works to support the family financially. The applicant submitted a letter from her son's doctor, Dr. [redacted] Dr. [redacted] states that the applicant's youngest son has been a patient in his office from March 19, 2001 to March 28, 2005. In his letter, Dr. [redacted] states that the applicant's son is sad and nervous. He states that he is suffering from severe emotional distress at the thought of being separated from his mother and has recently been treated for anxiety induced acid reflux disease. *Letter from Dr.* [redacted] dated March 29, 2005. However, the record does not establish how the applicant's son is being treated for his anxiety induced acid reflux disease and how this treatment would create a significant burden on the father in the absence of the applicant. The AAO recognizes that separation from the applicant will result in hardship to the applicant's family, but the current record does not establish that this hardship amounts to extreme hardship to the applicant's spouse.

Therefore, the AAO finds that the applicant has not established that her spouse would suffer extreme hardship as a result of her inadmissibility. 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 remains entirely with the applicant. *See* 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.