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

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: MAR 1 2 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, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of U.S. citizen children. 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 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 November 17, 2004.

The record reflects that, on November 26, 1996, the applicant applied for admission at the San Ysidro, California Port of Entry. The applicant presented a border-crossing card belonging to another under the name [redacted]" The applicant was placed into immigration proceedings. On November 29, 1996, the immigration judge ordered the applicant removed. The applicant was removed from the United States and returned to Mexico on the same day. On December 2, 1996, the applicant applied for admission at the San Ysidro, California Port of Entry. The applicant presented a Mexican passport containing an I-551 Lawful Permanent Resident stamp belonging to another under the name "[redacted]" The applicant was placed into proceedings. On December 5, 1996, the immigration judge ordered the applicant removed. The applicant was removed from the United States and returned to Mexico on the same day. On March 26, 1998, the applicant married [redacted], a U.S. citizen by birth. On April 11, 2001, 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 on his behalf by [redacted]. On August 9, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant admitted that he had attempted to obtain admission to the United States by fraud on two occasions in 1996 and that three days thereafter he entered the United States without inspection. On August 9, 2002, 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 appeal, the applicant contends that the applicant's wife and children will suffer extreme hardship. *See Applicant's Brief,* dated December 15, 2004. In support of his contentions, the applicant submitted the referenced brief, updated affidavits, psychological reports, a birth certificate for the applicant's second child, medical documentation reflecting the applicant's spouse was pregnant in December 2004, family photographs, country conditions reports 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.

. . . .

(ii) 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 admitted use of immigration documents belonging to another to attempt to procure admission into the United States in 1996. On appeal, counsel does not contest the district director's determination of inadmissibility.

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. 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).

Since [redacted] is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether she resides in the United States or Mexico.

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 [redacted] have a nine-year old daughter and a three-year old daughter who are both U.S. citizens by birth. The record reflects that, in December 2004, [redacted] was approximately three months pregnant, therefore, the AAO finds that the applicant and [redacted] may also have a one-year old child who is a U.S. citizen by birth. The record reflects further that the applicant and Ms. [redacted] are in their 30's and [redacted] may have some health concerns.

Counsel contends that the most important factor in determining extreme hardship is separation from family. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), The Ninth Circuit Court of Appeals (the Ninth Circuit) 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. However, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute "extreme hardship."

Counsel asserts that [redacted] will suffer extreme hardship if she remains in the United States without the applicant because [redacted] has severe emotional problems that could stem from a mental instability. Counsel asserts that [redacted] gets very depressed and needs medication, therapy and sometimes hospitalization. Counsel asserts that [redacted] needs the applicant to help her emotionally, financially and to care for their children because she is sometimes too sick to care for them herself. Counsel asserts that [redacted] medical condition has worsened and that she had to be hospitalized due to severe anxiety and depression. Counsel asserts that [redacted] was placed on two medications for the anxiety and depression, which she can no longer take due to her pregnancy. Counsel asserts that [redacted] is in the processes of obtaining a diagnosis so that she can receive proper treatment for her ailment. [redacted], in her affidavits, states that, if the applicant is removed, her children will miss him very much because they are used to spending a lot of time with him and she would not able to afford someone to care for her children. She states that she will soon be too advanced in her pregnancy to be able to work and thinks she cannot survive without the applicant's help. She states that she has had medical problems since 2001, experiencing lack of appetite, sleeping problems, chest pains and pressure, chest palpitations, depression and sadness. She states she has had to use an inhaler in the past for her breathing and she gets severe pains in the back of her neck and headaches. She states she gets very emotional and moody. She states that she sometimes wants to die. She states that when she gets anxiety attacks the

applicant takes the children out of the house to allow her to relax and, when it is severe, he takes the children to her mother so that he can sit with her to calm her. She states that, in December 2001, she started to see a therapist at ABC Child Development, Inc. and was hospitalized on one occasion for severe anxiety, requiring two types of medication, which she can no longer take due to her pregnancy. She states that the applicant gives her a lot of emotional support when she is sick and that she will be unable to get this support from anyone else. She states that she cannot earn enough to provide a good life for her family without the applicant and that her children would suffer because she would have to take on a second job to provide for them. She states that she has seen a counselor for her depression and maintains monthly communication with her on her progress and development. Finally she states that she does not want her children to grow up without a father and she does not want to be, nor can she afford to be, a single-mother.

A letter from a mental health specialist at ABC Child Development, Inc. indicates that, in December 2001, [redacted] requested psychotherapy through her daughter's preschool program because she was feeling extremely anxious and depressed due to personal problems. [redacted] reported symptoms of lack of appetite, sleeping problems, headaches, chest pains, pressure on the chest, palpitations and sadness, reporting an increase in her symptoms where she feels shortness of breath and that she cannot stop thinking about her problems. [redacted] stated the biggest problem was the possibility of a forced separation of her family for legal reasons. The letter indicates [redacted] was recommended to seek medical assistance and given some relaxation techniques. The letter states that some sessions of counseling and psychological intervention would be provided.

A psychological report from a licensed clinical social worker indicates that the social worker observed that [redacted] was in a major depression and that she reported she has always felt bad through much of her life. The psychological report indicates that [redacted] stated she came from a dysfunctional childhood in which her mother was emotionally unavailable and remains emotionally unavailable to her even today. The psychological report states [redacted] has suicidal thoughts "but no plan." The psychological report recommends that [redacted] continues weekly psychotherapy and that having the applicant with her in Los Angeles is critical to her coping with her job stress, two children and another child on the way. The psychological report finally states that [redacted] would be unable to manage without the applicant.

While the letter from the mental health specialist indicates that [redacted] requested psychotherapy service in December 2001, the letter is dated June 2001. Additionally, the letter does not diagnose [redacted] with any physical or mental illnesses that would cause her to suffer hardship that is beyond those commonly suffered by aliens and families upon removal. While the letter indicates that some sessions of counseling and therapy will be provided, there are no follow-up reports in regard to the outcome of any of these sessions. Finally, while counsel and [redacted] assert that she has been receiving various counseling, emergency room and medical treatments since 2001, there is no evidence to support these assertions.

The submitted psychological report is based on a single interview between the applicant's spouse and the licensed clinical social worker who conducted the evaluation. Accordingly, it does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that [redacted] has received psychological treatment or evaluation other than during the appointment on which the submitted psychological report is based. Accordingly, the evaluation will be given little evidentiary weight. While the psychological report diagnoses [redacted] with major depression and recommends further treatment, there is no

evidence in the record to indicate that [redacted] continues to require or receive treatment for this diagnosis. The AAO notes that the psychological report indicates that [redacted] had a dysfunctional childhood with an emotionally unavailable mother, however, it appears to contradict [redacted]' testimony that her family is extremely close and her mother is always there to help her with the children. While the AAO acknowledges that [redacted] would experience distress and depression as a result of separation from her spouse and the separation of her children from their father, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [redacted] has family members, such as her parents and siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The AAO will not consider counsel's and [redacted] assertions in regard to inability to work or take medication due to [redacted] pregnancy because it appears that the birth has occurred, and is no longer a hardship that would preclude [redacted] from working or taking medication.

Financial records indicate that, in 2003, [redacted] earned approximately $23,640. The record reflects that Ms. [redacted] has family members in the United States, such as her parents and siblings, who may be able to assist her physically and financially in the absence of the applicant. However, even without assistance from the applicant or other family members, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. There is insufficient evidence in the record to establish that [redacted] is unable to perform work or daily activities due to a physical or mental illness. While it is unfortunate that [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. Moreover, the record reflects that the children already have alternative care provided by the applicant's mother or a babysitter during the periods in which the applicant and [redacted] are both absent from the home. The AAO acknowledges that [redacted] may have to lower her standard of living, however, the evidence in the record does not support a finding of financial loss that would result in an extreme hardship to [redacted] if she had to support herself and her children without additional income from the applicant, even when combined with the emotional hardship that has been previously described.

Counsel asserts that [redacted] would suffer extreme hardship if she were to accompany the applicant to Mexico because she would not be able to get any medical care for her medical conditions because they would be unable to pay for them, which will have a very severe impact on her emotional and physical health. Counsel asserts that education in Mexico after the 6th grade is very expensive and the applicant and [redacted] would be unable to provide education to their children in Mexico. Counsel asserts that [redacted]' entire family resides in the United States and she has always lived close to her family, which would cause her and her children severe hardship. [redacted] in her affidavit, states that if she had to go to Mexico with the applicant her life would be turned upside down since all of her family resides in the United States and she has never been away from them. She states that it would cause her severe pain to lose the connection that both she and her children have with her family. She states that she would be unable to get any medical attention for her medical problems. She states she does not know if she would be able to adjust her lifestyle to life in Mexico and she would have difficulty obtaining gainful employment in Mexico. She states she fears they would not have the same quality of life that is available in the United States because of the poverty in Mexico. She states that she has limited skills that are not in demand in Mexico and that her family would lose everything that they have worked so hard to achieve. She states that her children would have to abandon their country of birth, schoolmates and family. She states that they would have to abandon the benefits granted to them as

United States citizens. She states that she fears her children would not be able to have the same quality of resources to achieve higher education in Mexico. She states that, in order to support the family in Mexico, she and her husband would have to work two jobs and would deprive their children of their love, attention and guidance.

Having analyzed the hardships counsel and [redacted] claim [redacted] will suffer if she were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. Counsel asserts that Ms. [redacted] and the applicant would not be able to find employment in Mexico that was comparable to the employment in the United States. There is no evidence in the record to confirm that [redacted] and the applicant would be unable to obtain *any* employment in Mexico and 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). The AAO notes the country conditions information provided by counsel on appeal, including Mexican wage and cost-of-living reports and discussions of the educational system in Mexico. However, such information is too generalized to serve as proof of the economic and educational environments that would face [redacted] if she relocated to Mexico with the applicant. Counsel and [redacted] contend that [redacted] would be unable to afford appropriate medical treatment. This assertion is not, however, supported by the record. The respondent has submitted no evidence concerning the cost of relevant medical treatment in Mexico, and, as discussed above, there is insufficient evidence in the record to establish that [redacted] suffers from a physical or mental condition that requires treatment or would cause her to suffer hardship. While the hardships that would be faced by [redacted] in relocating to Mexico--adjusting to the culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities they would receive in the United State--are unfortunate, they are what would normally be encountered by any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes, as previously indicated, that the applicant's spouse and children, as U.S. citizens, 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, [redacted] would not experience extreme hardship if she remained in the United States without the applicant.

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.