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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)

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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant is the spouse of a U.S. citizen and the beneficiary of a petition for alien relative. The applicant was found inadmissible to the United States pursuant to §§ 212(a)(6)(C)(i) and (a)(9)(B)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(I). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and children.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel contends that the District Director failed to consider the physical harm that the applicant's wife will experience if he is removed. Counsel asserts that the applicant's wife requires the applicant's presence to care for their children when she suffers from periods of severe depression. The AAO notes that counsel submitted no information regarding the applicant's wife's depression with the waiver application; it appears on the record for the first time on appeal. On appeal, counsel submits letters from the applicant's wife, the applicant's stepchildren, the children's teachers, and a representative of a clinic where the applicant's wife received treatment. The entire record was reviewed in rendering this decision, and the AAO concurs with the district director's finding that the applicant has failed to establish that his wife will suffer extreme hardship if he is removed from the United States.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of fraudulent evidence of lawful permenent residence (LPR) status in order to gain admission to the United States in November 1998.

Section 212(i) provides, in pertinent part:

> (i)(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). Hardship to the alien himself or his children is not a permissible consideration under the statute. A § 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.

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

> (B) Aliens Unlawfully Present.-

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> > (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 [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.

The record reflects that the applicant entered the United States without inspection in 1994, left the United States briefly in November 1998, and re-entered in the same month using a false document. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 1998, a period of over one year. In applying to adjust his status to that of LPR, the applicant is seeking admission within ten years of his November 1998 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

It must be noted that while the bar resulting from inadmissibility under § 212(a)(9)(B)(i)(I) prevents the applicant from seeking admission for only ten years from his last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is indefinite. The hardship standard the applicant must meet is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

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 § 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).

On appeal, counsel asserts that the applicant's wife has suffered from depression for ten years, and that when her condition worsens, she is unable to care for herself or her children or work. The record in the instant case indicates that the applicant's wife is currently employed, and there is no evidence on the record that she has suffered breaks in employment due to any medical condition. There is also no evidence that she has been determined to be incompetent or disabled at any time. On appeal, counsel submits a letter written by [redacted] a Family Nurse Practitioner, on April 28, 2005. Nurse [redacted] wrote that the applicant's wife had been a patient at the [redacted] since 1995 and that she had responded fairly well to medications to treat her depression but did not require medication as of the date of the letter. Nurse [redacted] wrote that the applicant's wife had been employed at the same job for ten years and was doing well in her job. The letter also indicated that the applicant's wife enjoyed a supportive family and community, and that she had not required extensive counseling. Nurse [redacted] stated that stressful life situations aggravated the applicant's wife's depression; therefore, in view of the applicant's immigration situation, she was planning to begin taking medication again.

In her declaration of May 16, 2005, the applicant's wife wrote that during periods of severe depression, she was unable to work or care for her children. She stated that she relied on the applicant to care for the children when she was incapacitated. The applicant's wife did not describe in detail or provide specific information regarding any past occurrences of such episodes. The record does not include medical evaluations or other evidence regarding specific episodes of incapacitation. Based on the evidence of record, it may be possible to conclude that the applicant's wife has a history of episodes of depression for which she has (apparently successfully) taken medication, but it is not possible to conclude that the applicant's wife will become unable to care for herself or her children in the event the applicant is removed. As depression and anxiety in the U.S. citizen spouse is a common result of the removal of an alien spouse, it does not appear that the applicant's wife's emotional suffering will be extraordinary.

In her statement submitted with the original waiver application, the applicant's wife wrote that she feared suffering economic difficulties if her husband were to leave the United States. The record indicates that the applicant's wife is employed. There is no evidence that the applicant would be unable to contribute to the family's finances from a location outside the United States, or that the applicant's wife would be unable to make adjustments to the family's budget if necessary. It is noted that 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 notes that on appeal, counsel does not assert that the applicant's wife would suffer extreme hardship if she accompanied the applicant to Mexico. The record does not contain documentation establishing that suitable therapy or treatment for the applicant's wife's bouts of depression is unavailable in Mexico. In her statement submitted with the original waiver application, the applicant's wife wrote that if the applicant were removed, she and the children would accompany him; however, she felt that the children would suffer because they do not read or write Spanish. As noted above, the children's hardship can only be considered insofar as it causes the applicant's wife to suffer extreme hardship, and this is not supported by the record. It cannot be concluded that the applicant's wife would undergo extreme hardship were she to relocate to Mexico.

Although the anxiety caused by the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in some type of hardship to those involved, 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 exists.

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).

The AAO therefore finds that the applicant failed to establish extreme hardship to his wife as required under INA §§ 212(i) and 212(a)(9)(B), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B). In proceedings for application for waiver of grounds of inadmissibility under §§ 212(i) and 212(a)(9)(B) 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