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U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: APR 2 4 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois. 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, has a U.S. citizen wife and a U.S. citizen daughter, and is the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and daughter.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the waiver application.

On appeal counsel contended that the evidence submitted demonstrates that failure to approve the waiver application would result in extreme hardship to the applicant's wife. Although counsel did not contest the district director's determination of inadmissibility, the AAO will review that determination.

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.

In an interview conducted on March 21, 2006, the applicant admitted that he had used a passport, issued in the name of [redacted], to enter the United States during 1998, and that he had used a border crossing card, also issued in someone else's name, to enter the United States during May of some unknown year.

The record contains a copy of some pages of a passport issued in the name of [redacted] on October 7, 1998. The record contains a photograph of a B1/B2 U.S. visa issued to [redacted] on October 13, 1998 and placed in the aforementioned passport. The passport is stamped to indicate that the applicant entered the United States using that passport and visa on October 13, 1998. The record also contains a copy of a copy of a U.S. Border Crossing Card issued to [redacted]

On appeal, counsel confirmed that the applicant entered using another person's passport on or about October 13, 1998, and entered using that passport again during December 2002.

The passport, visa, date stamp, and the admission of the applicant and counsel, all taken together, are sufficient to show that the applicant entered the United States illegally on October 13, 1998 using the fraudulently obtained passport and visa, and entered illegally again, either using the fraudulently obtained border crossing card or the passport. By knowingly presenting a fraudulent passport, visa, and Border Crossing Card to gain entry into the United States, the applicant committed fraud as

contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> 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 . . ."

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 nonexclusive list of 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 contains a letter, dated June 12, 2006, from [redacted] the applicant's brother-in-law, who stated that he lives rent-free with his sister, who is the applicant's wife, and with the applicant, and is unable to depend on anyone else. He further stated that he would miss his friendship with the applicant if the applicant is not permitted to remain in the United States. He did not address any hardship the applicant's absence would occasion to the applicant's wife.

The record contains two similar letters from the applicant's wife. The applicant's wife signed those letters and dated her signature June 5, 2006. A notary's attestation on those letters states that it was signed and sworn to before her on June 12, 2006.

One letter discusses the hardship the applicant's wife would suffer if he left the United States and she remained. The applicant's wife stated that her husband is a good man, that she and her daughter depend on him, and that they are able to depend on no one else. She stated that, without the applicant's assistance, her daughter would require child care. She further stated that without his financial assistance she would be unable to pay the mortgage and car note and would be forced to sell her home and buy a used car. Finally, she stated, "I agonize just thinking of how my daughter would suffer by not having a father with her."

The applicant's wife's other letter addresses the hardship she would face if she accompanied the applicant to Mexico. She stated that the town her husband is from survives by agriculture and animal husbandry, that she is entirely unprepared for that life, and that learning the necessary skills would be difficult. She stated that she would suffer "major culture shock." She noted that she and her husband could temporarily stay with his relatives, but that they have no land or money to buy land.

The applicant's wife further stated that the health care available in the applicant's home town is inferior to the care available in the United States, and that her daughter would therefore not have the same level of care available to her that she now enjoys. She further noted that her two pregnancies were high-risk, that her first child died at birth, and that she is especially unlikely to be able to bear another child if she is obliged to live in the applicant's small town in Mexico.

The applicant's wife also noted that her daughter would not be able to obtain the same level of education if she were in Mexico.

A birth certificate in the record confirms the applicant's wife's assertion that her daughter was then approximately five months old. A Certificate of Fetal Death confirms that she was delivered of a stillborn child on May 14, 2004.

The record contains a letter, dated June 9, 2006, from [redacted], a doctor at a family health clinic in North Riverside, Illinois. [redacted] stated that the applicant's wife has been a

patient under the care of that clinic for prenatal care and childbirth since August of 2005. The doctor also stated that, in the event the applicant's wife becomes pregnant again, she would require close supervision and proximity to a Level 3 Perinatal Center. Another letter shows that the applicant's wife owes a debt for treatment rendered by the clinic, thus confirming that she was a patient there.

On appeal, counsel noted that the 2005 tax return submitted shows that the loss of the applicant's income during that year would have reduced the applicant's family's income from $42,518 to $34,567. Counsel further noted that the record shows a first mortgage payment of $1,220 and a second mortgage payment of $362.45. Counsel provided no evidence pertinent to the balance of the applicant's family's monthly budget.

The AAO finds that, if the applicant's wife chooses to live in Mexico, the applicant's wife would suffer extreme hardship. Given the difficulties she has experienced with her past pregnancies, the level of medical care she would require if she became pregnant is likely not available in her husband's rural home town. The AAO finds that for her to face the strong possibility of bearing another stillborn child would constitute extreme hardship. Further, the applicant's wife noted various other factors that would occasion her hardship if she were to relocate in Mexico.

The applicant's wife is not, however, obliged to live in Mexico. The record does not demonstrate that the applicant's wife would be unable to live on her own income, without the applicant's very moderate contribution. In addition, although the record demonstrates that the applicant's wife's brother has not been contributing financially, it contains no evidence that he would be unable to do so in the future.

The record contains insufficient evidence to demonstrate, that, as the applicant's wife asserted, in the event of the applicant's absence she would be forced to sell her house and buy a used car. Further, such financial hardship is a typical consequence of removal and does not rise to the level of extreme hardship when combined with other hardship factors. No evidence demonstrates that the applicant would be unable to obtain appropriate medical care in the United States if her husband were removed.

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 wife faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant's wife is devoted to him and is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over 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.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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 INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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.