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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES (SANTA ANA) Date: NOV 06 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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California denied the instant waiver application. The applicant appealed, and the appeal was dismissed by the Administrative Appeals Office (AAO). The applicant submitted a motion to reopen or reconsider. The district director denied the motion, then subsequently reopened and transferred the matter to the AAO. The matter is now before the AAO pursuant to the motion. The motion to reopen or reconsider will be granted. The previous decision of the AAO dismissing the appeal will be affirmed. The application for waiver of grounds of inadmissibility will be denied.

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen, the mother of two U.S. citizen children, and 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 reside in the United States with her husband and children.

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 *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the Board of Immigration Appeals stated that a misrepresentation is material if the applicant is excludable based upon the true facts, or if the misrepresentation shut off a line of inquiry relevant to the alien's eligibility, which line of inquiry might well have resulted in a proper determination that the alien should be excluded.

The record contains a sworn statement the applicant gave to an officer of USCIS on August 9, 2004, the date she and her husband were interviewed pertinent to the Form I-130 Petition for Alien Relative he filed for her as beneficiary. In that sworn statement, the applicant indicated that when she last entered the United States on August 6, 2003, she was returning to continue her residence with her husband in Huntington Beach, California. It also indicates that rather than revealing her true purpose when interview prior to admission, she stated, instead, that she was entering the United States to visit a girlfriend in Los Angeles, California.

In a letter dated September 1, 2004, the applicant's husband characterized the requirement of a waiver of the applicant's inadmissibility as a technicality caused by the applicant's poor memory and nervousness. The applicant's husband indicated that his Spanish is poor and he may have misunderstood the conversation between the applicant and the officer, but that he believes that his wife misspoke, incorrectly indicating that she had misstated her purpose in entering the United States on August 6, 2003. The applicant's husband provided no evidence in support of his asserted belief, nor even any basis for it.

Counsel stated, in a brief submitted in support of the instant motion, that each time the applicant entered the United States she answered the question as to her purpose in entering with the same phrase, which she viewed as the standard response because her friends used it and she had

previously been admitted on several occasions by giving that response. Counsel stated that the applicant believed that her Border Crossing Card (BCC) permitted her to enter the United States, and was unaware that her marriage, and her intention to live in the United States, affected her ability to enter legally using her BCC. Counsel argued that the applicant's misrepresentation was not, therefore, made to procure an entry visa.

The record contains no such statement from the applicant, and the basis for counsel's assertion is unclear. Counsel provided Departure Records showing that the applicant had entered the United States on other occasions since her marriage, and counsel indicated that each time she employed the same misrepresentation of her intent in entering the United States. Although counsel cites this as evidence that the applicant was unaware that she was unable to enter the United States lawfully since her marriage, the AAO finds it very unconvincing evidence in support of that assertion. Counsel also stated that the applicant indicated that she was married[1] on one such occasion, on January 16, 2001, but was, nevertheless, admitted. Counsel admits that no evidence exists that the applicant revealed, on that date, that she was married.

If the applicant's husband's assertion, that the applicant did not misrepresent the purpose of her entry into the United States, were found to be correct, then the applicant would not be inadmissible. If counsel's assertion, that although the applicant misrepresented her purpose in entering she honestly believed that, pursuant to the true facts, she was entitled to enter the United States using her BCC, were found to be correct, the applicant might not be inadmissible. The AAO will not reach that latter issue, however.

The applicant applied for entry into the United States on her BCC on August 6, 2003 by representing that her purpose in entering the United States was to visit friends in Los Angeles, whereas her actual purpose in entering the United States was to resume her residence with her husband in Huntington Beach, California. Based on that misrepresentation the applicant was granted a B-2 visitor's visa with permission to remain in the United States until February 5, 2004.

The applicant was aware that she was not entering the United States to visit a friend in Los Angeles, but was entering to resume residence with her husband in Huntington Beach. Her misrepresentation was therefore intentional. If she had revealed the truth, she would have revealed her immigrant intent, and would not have been admitted on her nonimmigrant visa. Her intentional misstatement, made to procure entry into the United States, was therefore material. The AAO finds that the applicant knowingly misrepresented a material fact as contemplated in section 212(a)(6)(C)(i) of the Act.

She believed, based on her past experience, that her misrepresentation would result in her admission to the United States, which it did. The AAO finds that the applicant misrepresented her intention specifically because she knew that her BCC would be found invalid for entry if the true facts were

[1] The applicant's husband was then a U.S. Lawful Permanent Resident, rather than a U.S. citizen. That distinction makes no difference to any determination in today's decision, however, as neither counsel, nor the applicant, nor the applicant's husband, contests that she intended to reside in the United States, rather than to visit a girlfriend in Huntington Beach.

known. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having intentionally misrepresented a material fact in order to gain entry. 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 her children 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 husband 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).

In his September 1, 2004 letter, the applicant's husband stated that the applicant remains at home to care for the two children born to her and her husband, and that he knows that the children will be devastated if she is not permitted to remain in the United States because the children cry when she is apart from them, even momentarily, and would be unable to bear her prolonged absence. He also stated that his wife performs various office duties, thus helping him with his business. He stated that if he is forced to employ an office worker the income he would then retain would be so diminished that he might be obliged to sell his house and seek smaller quarters. He stated that if he lived in Mexico his standard of living would be much lower and that, as he would therefore decline to live in Mexico, the result of denial of the waiver application would be the long term division of his family.

In a letter dated October 26, 2004, the applicant's husband indicated that he is profoundly attached to his wife and that if he were to lose her he would be psychologically devastated. He also stated that if his wife is not permitted to remain in the United States, their children would be unable to cope and would perform poorly at school. He provided no evidence to corroborate any of his assertions.

The 1999 Form 1040 U.S. Individual Income Tax Return of the applicant's husband shows that he earned $52,145 during that year. The record does not contain a 2000 tax return.

The joint 2001 Form 1040 of the applicant and her husband shows that they had total income of $59,200 during that year. A Form W-2 Wage and Tax Statement shows that Altrust USA, Inc. paid $50,000 of that amount as the applicant's husband's earned income for that year.

The joint 2002 Form 1040 of the applicant and the applicant's husband shows that they had income of $70,445 during that year. A W-2 form shows that Altrust USA Inc. paid all of that amount to the applicant's husband as his earned income.

The joint 2003 Form 1040 of the applicant and the applicant's husband shows that they declared total income of $27,276 during that year. Line 7, Wages, salaries, tips, *etc.* indicates that $6,421 of that amount was paid to one or the other of them, or split between them, as earned income. The record contains no W-2 form nor any other indication of which of them earned that amount. A Schedule E shows that $20,825 of that amount was income from corporations. Both the applicant and her husband are listed as the corporations' owners on that form.

The joint 2004 Form 1040 of the applicant and the applicant's husband shows that they declared total income of $31,409. That amount included $40,531 in business income, offset by deductions. Although a Schedule C was required to accompany that tax return, showing the source of that business income, no Schedule C was provided to the USCIS, and whether that income is attributable to the efforts of the applicant, or the efforts of her husband, or both, is not demonstrated by that form.

Previously, however, in connection with a Form I-864 Affidavit of Support, the applicant's husband submitted a letter, dated August 4, 2004, from [redacted] of Daiichi Electric Company, Ltd., of Hong Kong. That letter states, "[The applicant's husband] is employed by Daiichi Electric providing sales and engineering in its US office [and is] paid $8,500 per month." It further states that the applicant's husband had been working with that company since 2001.

The letter from [redacted], which was submitted to show that the applicant's husband was able to support his wife, shows that he was paid $8,500 per month during 2004, which equates to $102,000 per year. The 2004 Form 1040, submitted to show that removal of the applicant would occasion hardship to her husband, however, shows that the applicant had income of only $40,531 from a business he operated, and no other income.

Although those figures appear to conflict, they may be reconcilable. The $8,500 per month is apparently the applicant's husband's business revenue, and the smaller figure apparently represents the applicant's husband's personal income, derived from the net profit of his business.

A spreadsheet shows that the applicant's husband was paid $98,000 during the 2005 calendar year. That spreadsheet does not identify the company that paid the applicant's husband the amounts shown on that form. The spreadsheet appears to represent the unsupported assertion of the applicant's husband. In the brief filed to support the motion, counsel characterized that amount as the applicant's husband's gross income. This suggests that, again, it represents business revenue, which must be reduced by the amount of expenses necessary to its production to yield net profit, which would be the income the business would pay to the applicant's husband.

The record also contains what purports to be the applicant's family's monthly budget. One line of that budget is $1,400 per month for Food, Drink, and Gas. The budget also contains a separate entry for Gas. As such, some entries in that budget may be duplicative. A comment on that budget indicates that the applicant's husband is paying a monthly debt service on his home mortgage that is less than the monthly payment necessary to amortize it, which results in reverse amortization. The total monthly amount of the budget provided is $6,487.23, which equates to $77,846.76 annually. The AAO notes that neither the applicant nor her husband, nor both together, claimed to have earned that amount during any year for which financial information was provided other than 2004 and 2005, and that the evidence pertinent to those years appears to show that figure represented the gross receipts of the applicant's husband's business concern, rather than the family's income.

The record contains a letter, dated October 25, 2005 from [redacted] Dr. [redacted] stated that the applicant's son has been seen multiple times for cough, has been diagnosed with asthma, has been seen by an allergist, receives daily Pulmicort breathing treatments, and requires nebulized albuterol breathing treatments.

In a brief, counsel stated that the applicant's husband is the sole owner of Offshore Manufacturing Resources. The record contains a statement of Income by Customer Detail pertinent to the accounts of Offshore Manufacturing Resources, Inc. for the 2005 calendar year.

In the brief in support of the motion, counsel stated that the applicant's husband's parents, brother, and sister all died in England, and that he thus has no family ties outside of the United States. The record contains no evidence, nor even an assertion by the applicant's husband, that those relatives died or that he has no other relatives in England or elsewhere. Counsel's basis in making that statement is not revealed.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. Counsel's assertion that the applicant's husband has no other relatives will not be considered.

Counsel also stated that conditions in Mexico are different from those in England, where the applicant's husband was born, and from those in the United States, where the applicant's husband has lived and worked since 1980. Counsel stated that Mexico, although democratic, is notorious for poverty, corruption, and drug cartels. Counsel did not directly address how those conditions would affect the applicant's husband. It therefore has very little weight in determining whether failure to approve the waiver application would result in hardship to the applicant's husband.

Counsel stated that the applicant's husband does not speak, read, or write Spanish, and does not intend to learn it. Counsel states that the only ties the applicant's husband has to Mexico are through his business.

Counsel stated that the applicant and her husband met in Tijuana, Mexico during mid-1999 when he was there on business. Counsel stated that the applicant's husband has never traveled to Mexico either for GTO, a business of which he was part owner until 2005, when it dissolved, or for OMR, a company he presently owns. The significance of the applicant's husband never having conducted business in Mexico for those two particular companies is unknown to this office.

Counsel stated that the applicant's husband normally takes at least three business trips to China per year, and attends trade shows in the United States. Whether counsel intended to imply that he would be unable to engage in those activities if he lived in Mexico is unclear.

As to the financial impact of the applicant's departure, counsel noted that the applicant's current economic status was acquired over more than 25 years and that he is now over 50 years of age. Counsel stated that the applicant's husband would suffer from a language barrier in Mexico.

Counsel stated that, if the applicant is removed from the United States and her husband and children remain in the United States, the economic impact will include the need to hire a sales assistant, whom counsel stated "will probably command at least $50,000 as annual salary." Counsel did not explain how he arrived at that job description or that amount. Counsel did not address whether employment of a sales assistant would generate additional income.

Counsel also stated that the applicant's absence would require her husband to employ domestic help at an expense counsel estimates to be between $26,400 and $30,000 annually. Counsel also stated,

perhaps in the alternative, that the applicant's husband ". . . may be prevented from [taking business trips] abroad because of his children," and " . . . will almost certainly lose a large portion of his business volume for the lack of personal presence with his suppliers in China," but without explaining that projection.

Counsel also stated that the applicant's husband would be obliged to pay for the applicant's support in Mexico because, ". . . she does not have the necessary skills to find a job in Tijuana six years after her last employment." Counsel did not explain in what way the skills necessary to secure employment in Tijuana have changed so dramatically during the past six years as to preclude the applicant's employment there.

Further, counsel stated that the applicant was earning the equivalent of $80 per week, which equates to $4,160 annually, when she last worked in Tijuana, but that to rent a "livable apartment" in Tijuana now would cost $300 to $400 per month, which, when combined with other living expenses, including transportation, insurance, and medical insurance, would require, and cost the applicant's husband, ". . . at least $1,000 each month for the Applicant's living expenses." Counsel did not further explain how he arrived at that figure. Counsel did not explain how the applicant previously survived on her income of approximately $4,160 per year, or how anyone else is able to, if individual living expenses are roughly $12,000 per year.

As to the economic consequences of the applicant's husband and children accompanying her to live in Mexico, counsel stated, "It [is] impossible to project or speculate upon the family's future in Mexico considering the vastly different conditions between the [United States] and Mexico . . . ." Counsel stated, ". . . no one [can] project how much capital, and most importantly, how many years, will be required for the family to re-establish [its current economic condition]." Counsel also stated that the applicant's husband would likely be unable to provide for his family if they moved to Mexico, but did not explain how he reached that conclusion. Counsel also failed to explain why the applicant's husband would be unable to operate his current business from a new location in, or near, Mexico.

In any event, counsel argued that, therefore,

> The family's economic wellbeing will be effectively destroyed by the Applicant's departure and living apart in Mexico. The destruction of an otherwise productive and well-to-do family should be as an economic detriment that amounts to extreme hardship.

Counsel noted that if the applicant's family relocates to Mexico, they will be obliged to decide whether or not to sell their home in the United States. Counsel stated, "Should the residence be sold, [the applicant's family] would lose their life-time investment and have nothing left for their children . . . ." The AAO notes that, if the applicant's family decides to sell their United States residence, they would have the proceeds of the sale.

Counsel noted that the evidence shows that the son of the applicant and her husband has asthma, and is receiving treatment. Counsel stated, "The humidity, heavy pollution, [and] unsafe environment in Tijuana will undoubtedly compound [the child's] pre-existing condition and adversely affect [his] health in a profound way . . . ." Counsel added that the applicant and her husband have no faith in Mexican medicine and that the applicant's mother died as the result of misdiagnosis in Mexico. Counsel concluded that, therefore, the hardship that moving to Mexico would cause to the applicant's husband exceeds that which would accrue in a typical case of removal. Counsel provided no evidence pertinent to that alleged misdiagnosis or to it having precipitated the applicant's mother's death.

As to the emotional consequences of removal of the applicant to Mexico, counsel stated that the applicant's husband would suffer from separation from the applicant because, being unable to reestablish himself financially in Mexico, he has no intention of moving there. He further stated that the marriage of the applicant and her husband would be destroyed because of the lack of intimacy, the family would thus be destroyed, and that her husband would be destroyed by guilt for having terminated the marriage.

As to the consequences if the applicant leaves the United States and her children remain with her husband in the United States, counsel stated, ". . . the emotional trauma left in the young children's minds will be deep and they may not be recovered from," [sic] but did not further explain that assertion.

Counsel also noted that the applicant's husband would be obliged to learn to care for his children as a single parent. As to that necessity, counsel stated, ". . . a positive result may not be achieved," without further elaboration.

Three scenarios must be examined in determining whether denial of the waiver application and removal of the applicant would cause her husband extreme hardship. The AAO must consider the hardship that will result if the applicant is removed to Mexico and her husband and children remain in the United States; it must consider the hardship that would result if the applicant is removed to Mexico and her children go with her, while her husband remains in the United States; and it must consider the hardship that would result if the applicant is removed and her children and husband join her in Mexico to live. The applicant must demonstrate that denial of the waiver application will cause extreme hardship to the applicant's husband, notwithstanding which option he might select.

Counsel asserted that the removal of the applicant to Mexico, if her husband remained in the United States, would not permit physical intimacy and thus would doom their marriage. Counsel provided no additional reasoning or authority for that assertion. Further, counsel did not discuss the possibility that the applicant's husband might move to a location closer to the Mexican border, and his wife, thus increasing the opportunities for physical intimacy.

The applicant's husband and counsel asserted that, if the applicant is removed to Mexico and her children remain in the United States with their father, the emotional trauma would be so profound that they might never recover from their trauma. Initially, the AAO notes that hardship to the

applicant's children is not directly relevant to any material issue. It is relevant only to the extent that it may be shown that it would inflict hardship on the applicant's husband.

Further, Counsel provided no evidence from mental health professionals or any other source to support the assertion that the applicant's children might be unusually susceptible to such hardship, and would respond unusually poorly. The record contains no evidence that the separation of the applicant's children from her would result in hardship to them that would be greater than in a typical case. Some degree of hardship to the applicant's children would be expected in such a situation, however, and the degree of hardship it might cause to the applicant's husband will be considered.

Similarly, the applicant's husband asserted that he, himself, would be emotionally devastated by being separated from the applicant. Again, however, no evidence, from mental health professionals or any other source, was provided to show that his separation from his wife would cause him to suffer emotional hardship greater than that contemplated in a typical case of spouses separated by removal of one spouse to another country. Some degree of hardship is to be expected in such a scenario, however, and will be considered.

Counsel also asserted that the applicant's husband would be obliged to learn how to raise his children as a single parent. Although this is a hardship that might typically be expected to follow the removal of a spouse, the AAO will accord it some weight.

As to the financial hardship that would be wrought by the applicant's departure, counsel asserted that if the applicant is removed and her children and husband remain in the United States, this would greatly reduce the husband's ability to conduct his business, and, perhaps in the alternative, would greatly increase the cost of his conducting that business, as he would be obliged to obtain a sales associate to replace the services his wife rendered. Counsel stated that the applicant's husband would also be obliged to employ domestic help to replace his wife in that context. Counsel asserted that the applicant's husband would be obliged to support her in Mexico, as she would be unable to support herself and, in any event, the salary she could command, if she found work, would be woefully insufficient to support her. The AAO finds, as was explained above, that counsel's pronouncements and estimates pertinent to all of those factors are entirely unsupported and manifestly unlikely.

Notwithstanding that counsel's cost estimates are unsupported, the AAO notes that the applicant has allegedly been providing some managerial support to the applicant's husband's business. The applicant's husband would be obliged either to work around the loss of that support or to hire an employee. That employee would, of course, require wages.

Because the applicant's children are still quite young, the absence of the applicant's husband as necessary to conduct his business, both routine absences during each work day, and longer absences for foreign travel and to attend trade shows, would necessitate a domestic employee. That employee would also require wages.

During the years for which net income figures are available, the applicant's husband earned $52,145, $59,200, $70,445, $27,276,[2] and $31,409 during 1999, 2000, 2001, 2002, 2003, and 2004, respectively. The applicant's husband's earnings do not appear, during a typical year, and especially during recent years, to be sufficient to support himself and his children if reduced by the amount necessary to employ an office worker and by an amount necessary to secure domestic help.

Counsel has demonstrated that, if the applicant is removed to Mexico, and her children and husband remain in the United States, he would suffer economic hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The AAO will now consider the second scenario, that of the applicant's being removed, her children accompanying her, and her husband remaining in the United States.

Although neither the applicant's husband nor counsel mentioned this aspect of hardship, the AAO will consider that separation of the applicant's husband from his children would likely cause him emotional hardship. The record does not demonstrate, however, that he would suffer more than would be expected in a typical case of removal.

The record contains evidence that the applicant's son has been diagnosed with asthma. Counsel argued, from that evidence, that he would suffer great medical hardship if he moved to Mexico, and, more specifically, to Tijuana. Initially, the AAO notes, again, that hardship to the applicant's children is not directly relevant to today's decision, but will assume that any medical hardship to the child of the applicant and her husband would engender some hardship to the applicant's husband.

None of the medical evidence provided, however, addresses the severity of the applicant's son's asthma. Further, although counsel has asserted that the condition would be aggravated by moving to Tijuana, he provided no evidence in support of that assertion. Further still, if the applicant and her children moved to Mexico, they would not be obliged to live in Tijuana. Counsel has not demonstrated that moving to Mexico would cause any medical hardship to the applicant's son, and has not demonstrated, therefore, that it would result in hardship to the applicant's husband.

Counsel observed, if the applicant and the children are removed from the United States and the applicant's husband remains, he and the applicant might be obliged, or choose, to sell the family home and seek smaller quarters. Counsel stated that in that event, ". . . they would lose their life-time investment and have nothing left for their children . . . ." In that event, however, the applicant's family would have the proceeds of that sale. It would not necessarily be the economic catastrophe that counsel depicts.

Further, as was observed before, if the applicant is removed to Mexico and her husband remains in the United States, he might wish to relocate closer to the border in order to be closer to the applicant. No reason was provided that the applicant's husband could not run his business from a location

[2] That entire amount may, or may not, be fairly attributable to the applicant's husband.

closer to the Mexican border. In that event, the applicant's husband would be able to visit the applicant in Mexico and their children would be free to visit both sides of the border.

Although the applicant's husband has stated that he would not go to Mexico, the AAO will consider that possibility. Further, although counsel flatly stated that the applicant's husband does not intend to learn Spanish, counsel provided no evidence that the inability to speak Spanish while living in Mexico would cause him any hardship, economic or otherwise.

Although counsel asserted that the applicant's husband would be unable to conduct business in Mexico, his support for that assertion was very abstract. He stated that the applicant's husband is over 50 years old. He also stated that the applicant's husband has a degree in engineering and has more than 25 years of experience. Further, the record shows that the applicant's husband has traveled to Mexico on business in the past. It contains no indication that the applicant's husband would be unable to conduct his business from a location in Mexico, especially as he would be freely able to cross the border to the United States, and to travel elsewhere.

The evidence does not show that the applicant's husband, if he moved to Mexico, would be obliged to start over, as counsel asserted, or that, notwithstanding that the applicant's husband does not speak Spanish, he would be unable to continue his current level of success in Mexico, either operating his current business, or by starting another business, or by working for someone else's business, on either side of the border.

The record does not demonstrate that, if the applicant's husband moved to Mexico with the applicant and their children, he would suffer economic hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he 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 husband is 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 her 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 motion is granted. The AAO's decision of April 25, 2006 is affirmed. The application is denied.