U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: JAN 08 2010

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, which 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 spouse of a U.S. citizen, the father of two U.S. citizen daughters, 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 his wife and children. The district director found that the applicant had failed to establish that denial of the waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal counsel submitted additional evidence and contended that the evidence submitted demonstrates that to deny the waiver application would cause the applicant's wife extreme hardship. Although counsel did not appear to 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.

The record contains a Form I-589 Application for Asylum which the applicant submitted to INS, the predecessor agency of USCIS, on November 29, 1995. In it, he stated that he was born in El Salvador and was a Salvadorean national. He stated that his mother and father were also Salvadorean and gave a detailed account of persecution he claimed to have suffered in Salvador on the basis of his affiliation with a political party there. The applicant signed that form on November 24, 1995, certifying, under penalty of perjury, that the information on that form was true and correct.

The applicant's birth certificate, which is in the record, shows that he was born in La Noria de Barajas, which is in Guanajuato, Mexico. It further shows that both of his parents were Mexican. The Form I-130, which the applicant's wife signed on August 7, 1999, states that the applicant was born in La Noria de Barajas, Guanajuato, Mexico. On G-325 Biographic Information forms that the applicant signed on August 9, 1999 and January 2, 2001, and submitted to USCIS, the applicant stated that he was born in Guanajuato, Mexico.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 446 - 449 (BIA 1960; AG 1961), the Board of Immigration Appeals defined the elements of a material misrepresentation, as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

The applicant's assertion that he had suffered political persecution in El Salvador was material to his application for asylum.

The AAO finds that the applicant knowingly misrepresented his nationality and his residential history, and concocted a history of persecution in order to fraudulently obtain an immigration benefit. 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 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 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).

In an affidavit dated November 10, 2004, the applicant's wife stated that denial of the waiver application would cause her to suffer extreme hardship, but did not describe the specific hardships she would suffer, other than to say that she and her children would be obliged to live without the applicant, whom they love. She also noted that the applicant's mother and three brothers are living in the United States and that he has no family in Mexico, but did not indicate how the presence of the applicant's family members in the United States, or their absence from Mexico, would cause hardship to her.

The AAO notes that, on the Form I 601 waiver application the applicant stated that his three brothers then lived with him in [redacted] California. On a G-325 Biographic Information form that she signed on August 7, 1999, the applicant's wife stated that her parents both then lived in [redacted] California.

A 1998 Form W-2 Wage and Tax Statement shows that the applicant's employer paid him wages of $20,930.69 during that year. The record contains the applicant's 1998 Form 1040A U.S. Individual Income Tax Return. That return shows that the applicant declared total income of $20,931 during that year, which is equal to the amount show on the W-2 form, rounded. It also shows that he supported two foster children and a sister in his household during that year.

The record contains 1999 W-2 forms showing that the applicant's employer paid him $20,772.11 and the applicant's wife's employer paid her $18,505.45. The joint 1999 Form 1040A tax return of the applicant and his wife shows that they earned total income of $39,277 between them, which is roughly equal to the amounts shown on the W-2 forms, rounded. That return also shows that they had no dependents.

The record contains 2000 W-2 forms showing that the applicant's employer paid him $24,177.97 and the applicant's wife's employer paid her $13,183.72. The joint 2000 Form 1040 tax return of the applicant and his wife shows that they earned total income of $37,362 between them, which is

equal to the amounts shown on the W-2 forms, rounded. That return also shows that they had one dependent, their daughter.

The record contains 2001 W-2 forms showing that the applicant's employer paid him $26,345.04 and the applicant's wife's employer paid her $18,576.83. The joint 2001 Form 1040 tax return of the applicant and his wife shows that they earned total income of $45,927 between them, which is roughly equal to the amounts shown on the W-2 forms. That return also shows that they had one dependent, their daughter.

The joint 2002 Form 1040 tax return of the applicant and his wife shows that they had total income of $43,064 during that year and that their daughter was their only dependent. The record contains no 2002 W-2 forms nor any other evidence to show which of them earned that income.

The applicant's wife's 2003 W-2 form shows that her employer paid her $13,532.89 during that year. The joint 2003 Form 1040 tax return of the applicant and his wife shows that they earned total income of $45,418 between them, and that their daughter was their only dependent.

A pay stub for the pay period ended October 29, 2004 shows that the applicant's wife's employer had paid her year-to-date gross wages of $20,106.54 during that year. A pay stub for the pay period ended October 31, 2004 shows that the applicant's employer had paid him year-to-date gross wages of $19,368.32.

The record contains various bills for utilities and other household expenses.

To demonstrate that the applicant's absence would cause extreme hardship to his wife, the applicant must show that, if he is absent from the United States and his wife remains in the United States, with or without their children, she will suffer extreme hardship. The applicant must also demonstrate that if he leaves and his wife joins him to live in Mexico, this will cause her extreme hardship. The AAO will first consider the scenario of the applicant being removed and his wife remaining in the United States.

One aspect of hardship is financial hardship. The record contains evidence pertinent to the applicant's and applicant's wife's income. That evidence appears to show all, or essentially all, of the couple's income. As was noted above, the evidence includes some bills showing amounts due. The record does not, however, contain an exhaustive list of the recurring expenses of the applicant and his wife. Without this information, the AAO cannot compare the couple's income and expenses and determine the degree of financial hardship the applicant's wife would suffer in his absence.

Further, the applicant appears to have had various relatives living with him at various times. Which of the bills he is responsible for is unclear. Whether any of his relatives, or any of his wife's relatives, will be able to render any assistance to the applicant wife in the event of his departure has not been discussed.

The evidence does not demonstrate, nor has anyone even alleged, that the loss of the applicant's income will cause the applicant's wife more hardship than one would typically expect when a spouse is removed from the United States. The evidence submitted does not demonstrate that, if the applicant is removed from the United States, whether or not his children depart with him, his wife will suffer financial hardship which, when combined with the other hardship factors in this case, will rise to the level of extreme hardship.

In her affidavit, the applicant's wife implied that she loves her husband very much, and would therefore suffer in his absence.

The record contains no evidence from mental health professionals or anyone else that suggests that, if the applicant is removed from the United States, whether or not the children depart with him, his wife will suffer emotional hardship more profound or more protracted than one would expect in a typical case of removal of a spouse. The evidence does not demonstrate that, if the applicant is removed from the United States and his spouse remains, the spouse will suffer emotional hardship which, when combined with the other hardship factors in this case, will rise to the level of extreme hardship.

No other hardship factors were discussed on appeal, nor was evidence submitted pertinent to any other hardship factors. The evidence in the record does not demonstrate that, if the applicant is removed from the United States and his wife remains, she will suffer extreme hardship.

The remaining scenario to consider is the hardship that will result to the applicant's wife if the applicant is removed to Mexico and she accompanies him to live there. The record contains neither evidence nor argument addressing the hardship that would result in that event. Being obliged to live outside the country one has chosen to make one's home necessarily results in some degree of hardship. The evidence in the record does not demonstrate, however, that if the applicant is removed to Mexico and his wife departs the United States with the children to live with him, she will suffer 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 spouse faces extreme hardship if the waiver application is denied. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties that typically arise when a spouse is removed from the United States.

The applicant appears to have loving and devoted family members who are 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.