



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE: [Redacted] Office: CHICAGO Date: **APR 13 2006**

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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, Chicago, Illinois, 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 child of two lawful permanent residents of the United States. She 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 her spouse and parents.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 13, 2002.

The record reflects that, on June 22, 1992, the applicant applied for admission into the United States by presenting a U.S. birth certificate belonging to another. The applicant was found inadmissible and was paroled into the United States for the purpose of criminal prosecution. On June 18, 1992, the applicant was convicted under 8 U.S.C. § 1325(a)(3) and 18 U.S.C. § 1028(a)(4)(B)(3). The applicant was sentenced to 90 days jail time for each count, which was suspended for a period of 3 years for each count. The applicant was, thereafter, returned to Mexico. The record reflects that the applicant reentered the United States without inspection, in August 1992. On March 11, 1995, the applicant married her spouse, [REDACTED] who was a lawful permanent resident of the United States. On March 29, [REDACTED] became a naturalized citizen of the United States.

On February 3, 2000, 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 [REDACTED]. The record shows that the applicant appeared at CIS' Los Angeles District Office on March 20, 2002. The applicant was informed that she needed to file Form I-601 because she had attempted to procure admission to the United States by fraud or willful misrepresentation of a material fact. On April 9, 2002, the applicant filed the Form I-601 with an affidavit from [REDACTED] support her claim that the denial of the waiver would result in extreme hardship to her family members.

On December 13, 2002, the district director issued a notice of denial of the application because the applicant had attempted to procure admission to the United States by fraud or willful misrepresentation of a material fact and had failed to establish that extreme hardship would be imposed on a qualifying family member.

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.

.....

- (iii) 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) of the Act on the applicant's admitted use of a U.S. birth certificate belonging to another to attempt to procure admission into the United States in 1992. Counsel does not contest the district director's determination of inadmissibility.

On appeal, counsel contends that the district director erred in finding that the applicant's husband would not experience extreme hardship if the applicant were to be removed to Mexico. *Letter in Support of Applicant's Appeal*, dated January 15, 2003. In support of this assertion, counsel submitted the above-referenced letter and medical documentation in regard to [REDACTED] father. However, the entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, the applicant and her spouse have an 11-year old daughter and a six-year old son who are both U.S. citizens by birth. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1999. [REDACTED] parents are separated and his father has health concerns, which have caused him to move in with [REDACTED] and the applicant in 2003. The record reflects further that the applicant is in her late 30's, [REDACTED] is in his 40's, [REDACTED] not have any health concerns.

Hardship to the alien herself 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. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship.

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 at 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).

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 statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

Counsel does not assert that [REDACTED] would suffer financial hardship if he were to remain in the United States without the applicant. Financial records indicate that [REDACTED] is the primary source of financial support for the family. In 2001, [REDACTED] contributed 100% or approximately \$22,822 to the household income. [REDACTED] now resides with the family and is cared for by [REDACTED] and the applicant. There is no evidence in the record to suggest that [REDACTED] is completely financially dependent upon [REDACTED] in his affidavit, dated April 2002, argues that he would be unable to afford a babysitter to watch his youngest child while he is at work. While it is unfortunate that [REDACTED] would essentially become a single parent and professional after-school childcare may involve an added expense and not equate to the care of a mother, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to him if he had to support himself, the children and his father.

Counsel asserts that [REDACTED] would suffer emotional hardship if he remained in the United States and the applicant returned to Mexico. There is no evidence in the record to indicate that [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. [REDACTED] in his affidavit, contends that his two U.S. citizen children will suffer emotional hardship if the applicant is returned to Mexico. However, as discussed above, hardship to the applicant's children is not a permissible factor in determining extreme hardship. Thus, hardship to the applicant's U.S. citizen children cannot be considered in this decision.

Counsel asserts that [REDACTED] would suffer emotional hardship if he remained in the United States and his wife returned to Mexico because of the care she provides to his father. In support of this contention counsel submitted documentation to evidence [REDACTED] father's medical conditions. However, counsel provides no evidence that [REDACTED] father currently resides with [REDACTED] that the applicant provides care [REDACTED] or that [REDACTED] father is unable to care for himself. Counsel indicates that [REDACTED] father has diabetes and dementia. The medical documentation submitted by counsel does not

indicate that [REDACTED] father has dementia. The medical documentation indicates [REDACTED] father has diabetes, but it does not give a prognosis. However, the medical documentation does indicate that [REDACTED] father has had the same medical conditions since 1999 and that [REDACTED] father resided in Southern California without the care [REDACTED] or the applicant until 2003. The medical documentation does not indicate [REDACTED] father requires the applicant's care, rather it indicates that [REDACTED] "wishes to come and pick him [REDACTED] father] up to transport him back to Illinois." Additionally, [REDACTED] father is not a qualifying family member since he is not the applicant's father, but the father of the applicant's spouse. Hardship to [REDACTED] father is, therefore, not hardship to a qualified family member. Moreover, according to the record, [REDACTED] has family members in the United States to support him emotionally in the absence of his wife.

Counsel contends that [REDACTED] would suffer extreme hardship if he followed the applicant to Mexico because he has no immediate family members left in Mexico, he would be unable to obtain employment sufficient to support the family, and he would be unable to provide care to his father. There is no evidence in the record that [REDACTED] would be unable to obtain employment in Mexico, or that any money he earned would be insufficient to support the family. Counsel contends that [REDACTED] would suffer emotional hardship if he were to live in Mexico and be unable to provide care to his lawful permanent resident father. However, as discussed above, there is no evidence that [REDACTED] father requires the care that counsel claims the applicant provides to him. Additionally, any hardship to [REDACTED] father is not hardship to a qualifying family member. [REDACTED] in his affidavit, asserts that his two U.S. citizen children will suffer hardship if they are required to return to Mexico with the applicant. However, as discussed above, hardship to the applicant's children cannot be considered in this decision. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record indicates that the applicant's mother and father are lawful permanent residents of the United States. However, counsel does not contend that the applicant's parents would suffer hardship if they were to remain in the United States or accompany the applicant upon the applicant's return to Mexico. Additionally, there is no evidence in the record, besides the information contained on the Form I-601, that the applicant's parents are lawful permanent residents of the United States. The AAO is, therefore, unable to find that the applicant's parents are qualifying relatives or that they would experience hardship should they remain in the United States or accompany the applicant upon the applicant's return to Mexico.

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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 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 she 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.