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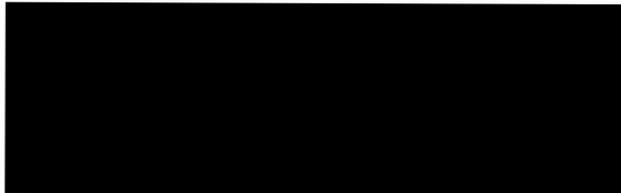
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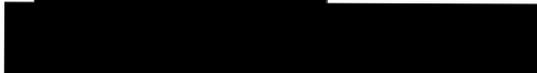
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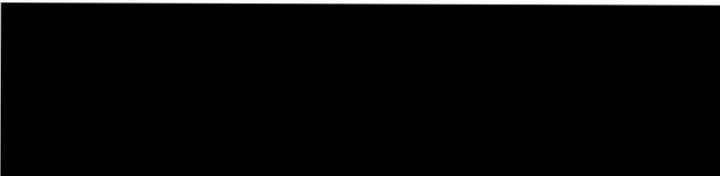
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IN RE:



APPLICATION: 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 APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, San Francisco, California, 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of a U.S. citizen child. He 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 his spouse and child.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 27, 2004.

The record reflects that, on November 25, 1995, the applicant applied for admission to the United States at the San Ysidro Port of Entry. The applicant presented a counterfeit Application for Nonresident Alien's Border Crossing Identification Card (Form I-190) and a counterfeit Identity Card for Mexican Nationals Residing in the Border Area (FM-13). The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) the Act for having attempted to procure admission into the United States by fraud. Consequently, on December 1, 1995, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date in January or February 1996. On February 6, 2001, 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 by the applicant's U.S. citizen spouse. The applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco District Office on September 26, 2001. The applicant admitted that he attempted to procure admission to the United States by fraud in 1995.

On November 4, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship. *See Applicant's Brief*, dated March 19, 2004. In support of his contentions, counsel submitted the above-referenced brief and medical documentation for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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)(i) of the Act on the applicant's admitted attempt to procure admission into the United States by fraud in 1995. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself 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. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen child will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 record reflects that the applicant married his spouse, [REDACTED], on July 31, 1998. [REDACTED] a U.S. citizen by birth. The applicant has a six-year old daughter who is a U.S. citizen by birth. The applicant also had a son who was born in 2000; however, in 2001, the applicant's son died. The record reflects further that the applicant and [REDACTED] are in their 30's, and [REDACTED] has some health concerns.

Counsel contends that the district director erred in citing to and comparing the applicant's case to case law involving other statutes under the Immigration and Nationality Act. However, while they involve other sections of the Act, the district director correctly cites these precedents, because they set forth factors and findings in regard to "extreme hardship." While the applicant may not be able to utilize extreme hardship to his child or to himself in qualifying for a section 212(i) waiver, these precedents offer general guidance as to what type or combination of hardships would constitute extreme hardship to the applicant's spouse.

Counsel asserts that [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant because of her medical conditions, because the death of her child has left her tortured and already suffering from an extreme sense of loss and devastation, and, because she comes from a broken home, she does not want to raise her remaining child without a father. Counsel contends that [REDACTED] would not be able to financially support herself without the applicant. In her affidavit [REDACTED] states that she could not afford to financially support herself and her daughter without the applicant and she does not want her daughter to be raised without a father. [REDACTED] states that she has an illness for which she sometimes requires help and that the applicant takes care of her and her daughter when she has episodes or is hospitalized.

Financial records indicate that [REDACTED] has contributed substantially to the household income and has been employed outside the home since 1988. Financial records indicate that, in 1998, the applicant's spouse's salary was approximately \$28,080. The record contains no evidence of the income generated by the applicant. While record contains some bills, they are not comprehensive costs associated with the applicant and [REDACTED] the record does not contain evidence of the household. Moreover, it appears that [REDACTED] has family members in the United States who may be able to provide financial support in the absence of the applicant. The record shows that, even without assistance from family members [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] may have to lower her standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

Counsel submitted medical documentation which indicated that [REDACTED] was being treated for a blood clotting disorder and is on medication which requires her to be regularly monitored for adjustments. The medical documentation submitted does not indicate that she has ever been hospitalized, her disease decreases her ability to work or that she requires assistance from the applicant or from any other person in order to function on a daily basis or during "episodes," or what is [REDACTED] prognosis. Counsel asserts that due to her illnesses and the death of her child [REDACTED] is psychologically sensitive. However, while the AAO acknowledges that it is difficult to lose a child, there is no evidence in the record to suggest that [REDACTED]

suffers from a physical or mental illness that would cause her to suffer physical or emotional hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] would essentially become a single parent, the applicant's child would essentially be raised by a single parent and professional childcare may be expensive and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that [REDACTED] works away from the home, indicating that the child may already have alternative care during the periods in which the applicant and [REDACTED] are absent from the home due to work commitments. Finally, according to the record [REDACTED] has family members, who may be able to support her emotionally in the absence of the applicant.

Counsel asserts that [REDACTED] would face extreme hardship if she relocated to Mexico in order to remain with the applicant because she has no ties to Mexico, she would be separated from her family in the United States and she will be separated from her intensive medical treatments. In her affidavit, [REDACTED] states that she could not uproot herself and her daughter to Mexico because she would not have a job, she is not prepared to work in Mexico, she would leave the seniority she has at her current job as well as the health benefits she needs for her medical conditions and her retirement security. [REDACTED] also states that she would lose contact with her family members in the United States and leave the country where she was born and raised.

There is no evidence in the record to suggest that the applicant or [REDACTED] would be unable to find *any* employment in Mexico. There is no evidence in the record to indicate [REDACTED] medical condition could not be treated in Mexico. While the hardships [REDACTED] faces are unfortunate, the hardships she faces with regard to adjusting to a lower standard of living, a new culture and country, and separation from friends and family, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

Counsel contends that [REDACTED] hardships meet the standard for extreme hardship set forth in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), as she suffers a "severe illness, family ties . . . combined with economic detriment to make deportation extremely hard on the alien or the citizen . . . family member." In *Matter of Anderson*, the Board of Immigration Appeals (BIA) held that, even though the applicant's spouse suffered from psychological maladies that required treatment, because the treatment of his wife's emotional difficulties could be obtained in the foreign country, albeit with economic sacrifices, the applicant's spouse's medical difficulties did not cause the hardship to meet the level required to show extreme hardship. As discussed above, there is no evidence in the record to indicate that [REDACTED] suffers from a physical or emotional illness for which she would be unable to obtain treatment in 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 his 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 he 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.