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FILE:

Office: LOS ANGELES

Date: JUN 09 2006

IN RE:

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:

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, Los Angeles, 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the daughter of a lawful permanent resident mother and U.S. citizen father, the spouse of a U.S. citizen and the mother of two U.S. citizen children. 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 mother, father, spouse and children.

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 January 11, 2005.

The record reflects that, on January 18, 1997, at the San Ysidro, California, Port of Entry, the applicant applied for admission into the United States. The applicant presented an I-551 Lawful Permanent Resident Card belonging to another. The applicant was permitted to return to Mexico. On January 20, 1997, at the San Ysidro, California, Port of Entry, the applicant applied for admission into the United States. The applicant presented an I-586 Border Crossing Card belonging to another. The applicant was found inadmissible 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 attempted to procure admission into the United States by fraud. Consequently, on January 23, 1997, the applicant was permitted to withdraw her application for admission and was returned to Mexico. The record reflects that the applicant reentered the United States without inspection, on an unknown date, but prior to March 8, 2002, the date on which she 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. On September 9, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office. The applicant admitted to attempting to procure admission to the United States by fraud in 1997.

On December 11, 2002, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erred in denying the Form I-601 because the applicant's spouse, mother and father would suffer extreme hardship. *See Applicant's Brief* dated February 11, 2005. In support of his contentions, counsel submitted the above-referenced brief, additional affidavits from the applicant and his spouse, an affidavit from the applicant's eldest son, letters of recommendation from family and community members, school records for the applicant's children and photographs of the family. 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) of the Act on the applicant's admitted use of a border crossing card belonging to another in order to attempt to procure admission into the United States in 1997. Counsel does not contest the district director's determination of inadmissibility.

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. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect their father or grandparents, the only qualifying relatives.

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's spouse [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 2001. The applicant's mother, [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident of the United States in 1992. The applicant's father, [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1999. The applicant has a 15-year old son and an 11-year old son who are both U.S. citizens by birth. The applicant's youngest son may have some learning disabilities. The applicant and [REDACTED] are in their 30's, [REDACTED] and [REDACTED] are in their 70's and [REDACTED] and [REDACTED] do not have any health concerns.

Counsel asserts that [REDACTED] would suffer financial and emotional hardship if he were to remain in the United States without the applicant and his children. [REDACTED] in his affidavits, states the applicant is responsible for the household duties and there is no one to take care of those duties in her absence.

[REDACTED] states the applicant attended all of their youngest son's therapy sessions for a learning disorder and he has been exhibiting signs of attention deficit disorder or a learning disorder for which they are seeking assistance. He states that the applicant is responsible for the children and he cannot imagine raising his children without her. [REDACTED] initial affidavit indicates that the children would remain with him in the United States, however, in his second affidavit, [REDACTED] states they would return to Mexico with the applicant. [REDACTED] states he would find it an emotional and financial hardship to support two households and to see his children lose educational and other opportunities in the United States.

Financial records indicate that the applicant's salary is \$40,560 per year. There are no records to indicate the applicant's income in the United States. The record contains no evidence of the costs associated with maintenance of two households or whether the applicant would be unable to obtain any employment sufficient to sustain her or aid in [REDACTED] maintenance of two residences. Furthermore, the applicant's mother and father, as well as a number of siblings, who, according to the record reside in Mexico, may be able to offer financial and emotional support to the applicant and her children which could ease [REDACTED] emotional and financial concerns. The record shows that, even without assistance from family members, [REDACTED] has, in the past, earned sufficient income to more than exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] may have to lower his standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

Documentation in the record indicates that the applicant's youngest son was diagnosed with a learning disability in 1998. However, that documentation also indicates that he received treatment and was, in 2001, found by the committee of the Los Angeles Unified School District to be demonstrating age-appropriate and grade level skills and that his needs could be met in the general education program. A letter from the family's general practitioner, dated January 2005, indicates that the applicant's youngest son was awaiting further

evaluation for a potential learning disorder, which was expected to conclude within 6 to 8 weeks of issuance of the letter. There is no other documentation in the record to suggest that, since 2001, the applicant's youngest son has been diagnosed with attention deficit disorder or another learning disorder or that he requires ongoing or special treatment. There is no evidence in the record to suggest that [REDACTED] or the applicant's children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

If the applicant's children were to remain with [REDACTED] in the United States, while it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be expensive and may 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. Moreover, the record reflects that the applicant has worked away from the household, indicating that the children 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, such as the applicant's siblings in the United States, who may be able to support him financially and emotionally in the absence of the applicant.

Counsel and [REDACTED] do not assert that [REDACTED] would suffer hardship if he returned to Mexico with his wife because he states he would remain in the United States if she were to be deported. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should he choose to join his wife in Mexico. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

Counsel asserts that [REDACTED] would suffer extreme hardship if the applicant were to be deported to Mexico. There was no explanation of what that hardship would be. It is noted that the Biographic Information (Form G-325) reflects that, despite being a U.S. citizen and lawful permanent resident, the applicant's parents reside in Mexico. The AAO is, therefore, unable to find that the applicant's parents would experience extreme hardship. Additionally, the record indicates that the applicant's parents have family members in the United States and in Mexico, who may be able to provide them with emotional and financial assistance in the absence of the applicant.

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 or parents would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or daughter 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 (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 lawful permanent resident mother and U.S. citizen spouse and father 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.