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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: CHICAGO

Date:

MAR 27 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, Director
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 benefits under the Act by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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.

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 September 30, 2003.

The record reflects that, on June 22, 1996, the applicant filed Form I-817 Application for Voluntary Departure Under The Family Unity Program (Form I-817) based on her marriage to a legalized alien. The application indicated that the applicant and her husband were married in Mexico on February 16, 1987. The applicant also submitted a copy of a Mexican marriage certificate, indicating the applicant and her husband were married on February 16, 1987. On November 4, 1996, the district director requested that the applicant forward the original marriage certificate to the district office for examination. On April 17, 1997, the district director issued a notice of intent to deny the application informing her that an investigation revealed the marriage certificate to be fraudulent. On August 28, 1997, the district director issued a notice of denial because the applicant had submitted a fraudulent marriage document when proof of marriage prior to May 5, 1988 was an essential element for obtaining the benefit under the Act.

On April 7, 2000, the applicant filed Form I-485 Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at CIS' Chicago District Office on November 19, 2002. The applicant testified that, on May 13, 1993, she entered the United States utilizing a B-2 nonimmigrant visa. The applicant also testified that she did not marry her naturalized U.S. citizen spouse, [REDACTED], until September 12, 1992.

On November 19, 2002, the district director issued a notice to the applicant informing her of the need to file Form I-601 because she had attempted to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. On December 30, 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 September 30, 2003, the district director issued a notice of denial of the application because the applicant had attempted to procure a benefit under the Act 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.

On appeal, counsel contends that the district director erred in finding the applicant inadmissible under section 212(a)(6)(C) of the Act for attempting to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. *See Applicant's Brief* dated October 28, 2003.

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.

The district director found that, because the applicant had submitted a fraudulent marriage certificate with the Form I-817, she had sought to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. [REDACTED] in his affidavit, indicates that both he and his wife were unaware that a fraudulent marriage certificate had been submitted with the Form I-817. [REDACTED] states that a "notario" named [REDACTED] prepared the application. [REDACTED] claims that the applicant and he did not respond to the notice of intent to deny the Form I-817 because they did not know the information that was contained in the application. Counsel contends that, because the applicant and her spouse were not aware that a fraudulent marriage certificate was submitted, the applicant did not commit fraud or willfully misrepresent a material fact. The applicant signed the Form I-817, indicating that she was married to [REDACTED] prior to May 8, 1988, specifically on February 16, 1987. [REDACTED] testimony is inconsistent with the Form I-817 and translations of the fraudulent marriage certificate. The Form I-817 indicates that the applicant did not receive assistance in preparing the application. [REDACTED] translated the fraudulent marriage certificate and the notary public who verified the translation is named [REDACTED]. There is no mention of [REDACTED] contained within the Form I-817 or the supporting documents. Additionally, an applicant is responsible for the information contained in any application and the documentation submitted to support that application. Finally, in 1997, when given an opportunity to explain the fraudulent document, the applicant did not provide a response to the district director. The applicant was responsible for the contents of the application and, even if she claims that she never saw the fraudulent marriage document, signed an application, which clearly stated that she was married on February 16, 1987. Moreover, when given the opportunity, the applicant did not retract the fraudulent document and willfully misrepresented material fact in a timely fashion.

The AAO notes that, at the time the applicant last entered the United States, she was married to a lawful permanent resident of the United States and intended to remain in the United States with her spouse. The applicant presented herself for admission as a visitor to the United States on May 13, 1993, at which time she made a willful misrepresentation of a material fact by failing to indicate that she was married to a lawful permanent resident of the United States.

The AAO finds that the applicant was an intending immigrant that willfully misrepresented herself as a nonimmigrant by presenting a nonimmigrant visa. The AAO also finds that the applicant attempted to obtain a benefit under the Act by fraud and willful misrepresentation of a material fact. The applicant, therefore, is inadmissible under section 212(a)(6)(C) of the Act because she procured admission into the United States and sought to procure a benefit under the Act, by fraud or willfully misrepresenting a material fact.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

On appeal, counsel asserts 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. *See Applicant's Brief* dated October 28, 2003. In support of the appeal, counsel only submitted the above-referenced brief. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that, on September 12, 1992, the applicant married [REDACTED] who is a native of Mexico and was a lawful permanent resident of the United States at the time of marriage. On September 24, 1996, [REDACTED] became a naturalized U.S. citizen. On April 7, 2000, the applicant filed the Form I-485 based on the Form I-130 filed by the applicant's U.S. citizen spouse. The applicant and her spouse have a thirteen-year-old daughter and an eleven-year-old daughter who are both U.S. citizens by birth. The record reflects further that the applicant and [REDACTED] are in their 30's, and [REDACTED] and the children do 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. Thus, hardship to the applicant's U.S. citizen daughters will not be considered in this decision.

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 asserts 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 and that the applicant has worked outside the home since 2000. In 2001, [REDACTED] contributed about 84% or approximately \$54,078 to the household income. 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 without the additional income provided by the applicant, approximately \$10,482. Counsel contends that the district director's use of [REDACTED] "sufficient income" as a negative factor in determining extreme hardship is incongruent with *Matter of Cervantes-Gonzalez*, in which the Board of Immigration Appeals (BIA) found the U.S. citizen spouse's "very little income" was a negative factor. *Supra*. Counsel misquotes the use of "very little income" in *Matter of Cervantes-Gonzalez*. In *Matter of Cervantes-Gonzalez*, the BIA found that because the applicant's U.S. citizen spouse made very little money in the United States it would not be a hardship for him to accompany his spouse to her home country when he would not be able to obtain lucrative employment there. Here, the district director decided that [REDACTED] would not suffer financial hardship if he were to remain in the United States because he makes sufficient income to cover the costs associated with the family without the income provided by the applicant. Counsel contends that the district director's finding that because [REDACTED] makes an adequate salary he therefore has sufficient income to seek professional childcare is specious and callous. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare 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, since 2000, the applicant has worked away from the home, 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.

Counsel asserts that [REDACTED] would suffer emotional hardship if he remained in the United States and the applicant returned to Mexico. Counsel does not assert, and there is no evidence in the record to suggest, 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. Moreover, according to the record, [REDACTED] has family members to support him emotionally in the absence of his wife.

Counsel does not contend that [REDACTED] would suffer hardship if he were to return to Mexico with the applicant. However, [REDACTED] in his affidavit, states that the applicant's children would suffer hardship if

they returned to Mexico with the applicant. As discussed above, the hardship to the applicant's U.S. citizen children will not be considered in this decision. There is no evidence in the record that [REDACTED] would be unable to obtain employment in Mexico sufficient to support the family or that he suffers from a mental or physical illness for which he would be unable to receive treatment in Mexico. 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 reflects that the applicant's parents are lawful permanent residents of the United States. Counsel does not contend and the record contains no evidence to suggest that the applicant's parents would suffer extreme hardship upon their daughter's removal to Mexico. The AAO is, therefore, unable to find that the applicant's parents would experience hardship should she be removed 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 (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 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. However, the AAO does note that counsel's argument that the type of fraud committed by the applicant is a factor that should be used in determining whether the hardship faced by the applicants spouse constitutes extreme hardship is erroneous. The type of fraud committed by the applicant would be a factor in deciding whether the applicant 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.