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U.S. Citizenship  
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FILE: [Redacted] Office: PHOENIX, ARIZONA Date: **AUG 30 2007**

IN RE: Applicant: [Redacted]

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:  
[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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The Acting District Director denied the waiver application, finding that the applicant failed to establish hardship to a qualifying relative. *Decision Acting District Director, dated October 31, 2005.* The applicant submitted a timely appeal.

The submitted appeal notice indicates that a brief and/or evidence will be sent to the AAO within 30 days. On July 16, 2007, the AAO faxed a notice to counsel requesting the brief and/or evidence. The AAO received no response from counsel. Therefore, the record as constituted is complete.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (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 elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) 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 have resulted in a proper determination that he be excluded.

The record reflects that the applicant presented a fraudulent U.S. birth certificate in the name of Gerardo Cabrales to immigration officers in order to gain admission into the United States. *Record of Deportable Alien, Form I-213, dated February 11, 1996; Los Angeles birth certificate, issued August 3, 1994; Record of Sworn Statement.* The record therefore supports the director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

- (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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's stepfather, [REDACTED] who is a citizen of the United States. It is noted that the applicant submitted no evidence to establish that his mother is a qualifying relative. 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 contains income tax documents, W-2 forms, earnings statements, birth certificates, a marriage certificate, school transcripts, a letter from the applicant's mother, and other documents.

As this case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, decisions from that court will be given appropriate weight in this proceeding.

On appeal, counsel states that the relevant factors in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), were not considered in assessing hardship. She states that adjustment of status and suspension of deportation cases are different from each other: a suspension involves a long-term resident; an adjustment of status case deals with an applicant who is an intending immigrant who does not necessarily have significant ties to the community. Counsel asserts that the hardship assessment did not include the factors of [REDACTED] ties to the United States, the impact of his relationship with the applicant, and family unification. Counsel claims that the applicant established "extreme hardship" on account of family separation.

Counsel indicates that adjustment of status and suspension of deportation cases should be handled differently in assessing "extreme hardship." The AAO disagrees. The AAO notes that *Matter of Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999), is used in cases involving waivers of inadmissibility as guidance for what constitutes "extreme hardship" and the BIA supports this cross application of standards. In *Matter of Cervantes-Gonzalez*, the BIA assessed a section 212(i) waiver of inadmissibility, and wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . . [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

Moreover, in a cancellation of removal case, *In Re Monreal-Aguinaga*, 23 I&N Dec. 56, 63(BIA 2001), the BIA states:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing “extreme hardship” for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing “exceptional and extremely unusual hardship” are essentially the same as those that have been considered for many years in assessing “extreme hardship,” but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

Also, the BIA, in the suspension of deportation case, *In Re Kao-Lin*, 23 I & N Dec. 45, 54 (BIA 2001), referred to the factors listed in *Matter of Anderson*, *supra*, in making a determination of extreme hardship, stating in footnote 3 that:

The standard for “extreme hardship” that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In rendering this decision, the AAO will apply to the present case the factors set forth in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), and *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), and other cases to the extent they are relevant in assessing hardship to the applicant’s stepfather.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez* at 560, 565. The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of Anderson*, in assessing hardship the BIA examined:

[T]he age of the subject; family ties in the United States and abroad; length of residence in the United States; condition of health; conditions in the country to which the alien is returnable-economic and political; financial status-business and occupation; the possibility of

other means of adjustment of status; whether of special assistance to the United States or community; immigration history; position in the community.

*Id.* at 597

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* and *Matter of Anderson* factors here, extreme hardship to the applicant’s stepfather must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The applicant’s stepfather makes no claim of economic hardship if he remained in the United States without his stepson.

Counsel states that separation of family must be considered in assessing hardship. Courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Amezquita-Soto v. INS*, 708 F.2d 898, 902 (3d Cir.1983) (finding that neither petitioner nor his daughter would suffer extreme hardship if the petitioner were deported because the grandmother had raised and could care for the child); *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); *Banks, supra* at 763 (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Noel v.*

*Chapman*, 508 F.2d 1023, 1027-28 (2d Cir.), *cert. denied*, 423 U.S. 824, 96 S.Ct. 37, 46 L.Ed.2d 40 (1975). In *Dill v. INS*, 773 F.2d 25 (3<sup>rd</sup> Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED], if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, Amezquita-Soto, Guadarrama-Rogel, Banks, Noel, and Dill, supra*.

[REDACTED] makes no claim of hardship if he were to join his stepson in Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.