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FILE: [REDACTED]

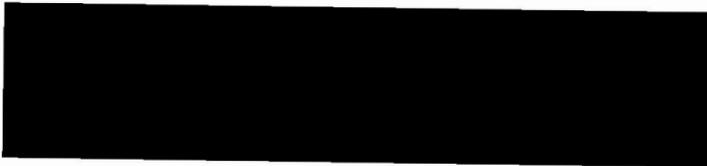
Office: SAN FRANCISCO, CA

Date:

IN RE: [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:



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 cursive script, 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 attempting to procure immigration benefits under the Act by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident mother. 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 immediate and extended family.

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 August 13, 2004.

The record reflects that, on September 9, 1993, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [REDACTED] his U.S. citizen spouse. In support of these applications a U.S. marriage certificate for the applicant and [REDACTED] was submitted. On June 1, 1994, the Form I-130 and Form I-485 were denied after the applicant and [REDACTED] failed to appear for an interview. On October 16, 2001, the applicant filed a second Form I-485 based on an approved Form I-130 filed on his behalf by his U.S. citizen sister. On July 22, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco, California District Office. The Form I-485 and the Biographical Information Sheet (Form G-325) indicated that he was currently married to [REDACTED] and had not been previously married or filed a prior Form I-485. The applicant testified that he had never been married to [REDACTED].

On October 25, 2002, the applicant filed the Form I-601 with documentation to establish that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's mother would suffer extreme hardship if the applicant were removed from the United States and that he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because he did not file a frivolous application or make a misrepresentation to obtain an immigration benefit. *See Form I-290B*, dated September 10, 2004. In support of his contentions, counsel submits an affidavit from the applicant and medical documentation for the applicant's mother. The entire record was reviewed in rendering a decision in this case.

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 record reflecting the applicant's applications for immigration benefits based on his marriage to [REDACTED], a marriage, which he admitted did not exist. On appeal, counsel contests the district director's determination of inadmissibility. The district director found that, because the applicant had submitted a fraudulent marriage certificate with the Form I-485 and indicated he was "married to an American Citizen" on the Form I-485, he had sought to procure a benefit under the Act by fraud or willful misrepresentation of a material fact. Counsel asserts that the applicant had no knowledge of what type of applications had been submitted on his behalf by a notary public in Los Angeles, California. Counsel asserts the applicant was the victim of a ruthless notary public who defrauded several people such as the applicant and who has since gone to jail for immigration fraud. Counsel asserts that the applicant relied on an unscrupulous person whom he believed would obtain valid employment authorization for him and it was not his intention to defraud the government. The applicant, in his affidavit, states that he did not understand much English at the time he signed the documentation that was prepared on his behalf by an attorney he visited and was never informed of how he would obtain his employment authorization. He states that the attorney never informed him that he would be married and that if he had been informed he would not have agreed. The record reflects that the applicant signed the Form I-485 and G-325, indicating that he was married to a U.S. citizen, specifically [REDACTED]. The marriage certificate submitted with the applications also bears the applicant's signature. The applicant's testimony is inconsistent with the applications and the fraudulent marriage certificate. The Form I-485 does not indicate that the applicant received assistance in preparing the application. While counsel asserts that the applicant was duped by a notary public who has since been punished for numerous immigration fraud charges neither counsel nor the applicant provide the name of the person or evidence that the person has indeed been convicted of immigration fraud related charges. The AAO also notes that the applicant did not make an assertion that he was unaware of the fraud until after the Form I-601 was denied. Additionally, an applicant is responsible for the information contained in any application and the documentation submitted to support that application.

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. In the present case, the only qualifying relative is the applicant's lawful permanent resident mother.

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, 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 mother, [REDACTED], is a native and citizen of Mexico who became a lawful permanent resident in 1997. The record reflects further that the applicant is in his 30’s, [REDACTED] is in her 70’s, and [REDACTED] may have some health concerns.

On appeal, counsel asserts that the applicant’s removal from the United States would cause an extreme hardship to his lawful permanent resident mother, who is ill with diabetes. The applicant, in his affidavit, states that his mother is an unemployed widow who relies on him economically. He states that he and his three lawful permanent resident brothers cover all of [REDACTED] household expenses. He states that [REDACTED] suffers from a heart condition and diabetes. He states that [REDACTED] relies on him to provide for her medical expenses as well as her living expenses. He states that while his mother resides with his brother, [REDACTED] this brother has been incapacitated for the past few years and cannot work. He states that he and his siblings have taken it upon themselves to support him by paying his medical and living expenses. He states that he and his siblings bought [REDACTED] a car so that he could drive [REDACTED] to all of her medical appointments. He states that theirs is a close-knit family. He states that his siblings would suffer hardship because they would have to cover his part of the expenses as well as their own household expenses.

A medical letter states that [REDACTED] is a patient at Fair Oaks Adult Clinic who has multiple medical problems including hypertension, diabetes and hyperlipidemia. The medical letter states she also had mild thyroid abnormalities, which are being monitored, and that she receives a number of medications for her problems. Finally the medical letter states that [REDACTED] requires routine clinical exams and routine blood drawing to monitor her diabetes. The medical documentation in the record also indicates that, in 2002, [REDACTED] was found to have a systolic heart murmur.

The record does not contain any evidence that establishes that the applicant's mother is financially or physically dependent upon the applicant. The AAO notes that the applicant states he has eight siblings in the United States who are either U.S. citizens, lawful permanent residents or are in the process of adjusting to lawful permanent resident status. Accordingly, the applicant's mother has other family members in the United States, such as her other adult children, who may be able to assist her financially and physically in the absence of the applicant. There is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to the applicant's mother if she had to support herself without income from the applicant, even when combined with the emotional hardship described below.

As discussed above, while the medical letter indicates that the applicant's mother suffers from hypertension, diabetes and hyperlipidemia, there is no evidence in the record to indicate that her condition would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. The record reflects that the applicant's mother has family members in the United States, such as her other adult children, who may be able to assist her physically and emotionally in the absence of the applicant.

Counsel and the applicant do not assert that the applicant's mother would suffer extreme hardship if she were to accompany the applicant to Mexico. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should she choose to join the applicant in Mexico. However, the AAO notes that, as a lawful permanent resident, the applicant's mother is 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.

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 mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son 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 has failed to establish extreme hardship to his lawful permanent resident mother 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.