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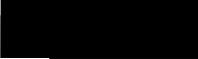
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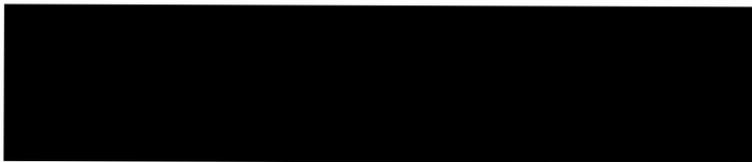
MAR 26 2007

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.

Robert P. Wiemann, Chief  
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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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.

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 28, 2005.

The record reflects that, on February 16, 1997, the applicant applied for admission at the San Ysidro, California Port of Entry. The applicant presented a lawful permanent resident card belonging to another under the name [REDACTED]. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and placed into proceedings. The applicant was later permitted to voluntarily return to Mexico. On April 23, 2001, 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 his U.S. citizen spouse. On August 13, 2003, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois District Office. The applicant admitted that not only had he attempted to obtain entry to the United States in February 1997 by presenting a lawful permanent resident card belonging to another, but that, in February-March 1997, he attempted to obtain admission to the United States by presenting a Mexican passport containing a U.S. nonimmigrant visa belonging to another. The applicant testified that he was denied admission and voluntarily returned to Mexico. The applicant testified that, in March 1997, he finally entered the United States without inspection. On October 30, 2003, 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 spouse.

On appeal, counsel contends that the district director made numerous errors of law in assessing the merits of the applicant's waiver and that upon full and accurate consideration of the facts the applicant's waiver warrants approval. *See Applicant's Brief*, dated April 1, 2005. In support of her contentions, counsel submits the referenced brief, the applicant's spouse's letter of resignation, the applicant's spouse's leave of absence applications forms, medical documentation in regard to the applicant's spouse and copies of documentation previously provided. 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 documentation establishing, and the applicant's admission to, attempting to enter the United States by fraud on two occasions in 1997. On appeal, 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.

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, on April 7, 2001, the applicant married his spouse, [REDACTED] [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not have any children. The record indicates that the applicant is in his 20's, [REDACTED] is in her 30's, and [REDACTED] may have some health concerns.

Counsel, citing *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964) and *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996), contends that the Board of Immigration Appeals (BIA) has recognized that different individuals will be affected differently by an alien relative's departure from the United States and that the word "extreme" should not be equated with "unique" or that the hardship needs to be unique to be extreme. Counsel asserts that, in comparing [REDACTED]'s hardship to that experienced by "any family" or "most aliens," the district director clearly demonstrated that he was looking for a unique hardship and held the applicant to a much higher standard than that required by the BIA. The AAO finds counsel's assertions unpersuasive. The use of "any family" or "most aliens" to which counsel refers is the district director's determination that [REDACTED] will not suffer hardship beyond that commonly suffered by aliens and families upon removal. These findings do not imply that [REDACTED] must establish that she would suffer hardship that is unique. Rather, they reflect the BIA's standard for extreme hardship; that the hardship suffered must be hardship beyond what is commonly suffered by aliens and families upon removal. *Matter of Cervantes-Gonzalez*, *Supra.* (citing *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) and *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).

Counsel, citing *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9<sup>th</sup> Cir. 2000) and *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987), asserts that the district director failed to consider that the courts have held "preservation of the family unity" to be a central factor in the determination of extreme hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS, Id.* (remanding to the 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). The AAO notes that the present case does not arise within the jurisdiction of the Ninth Circuit Court of Appeals. However, even if this case arose in the Ninth Circuit, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon removal. As discussed above, the BIA has also emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, that hardship must still be beyond the common results of removal to constitute "extreme hardship."

Counsel asserts that the denial of the applicant's waiver application would trigger a "change of events" that would cause [REDACTED] to lose their condominium and her vehicle because she is dependent on the applicant's income. Counsel asserts that, at the time the applicant's waiver was denied, the applicant's income amounted to nearly half of the couple's income and the district director's conclusion that [REDACTED] would be able to meet all of her financial obligations without the applicant's income is impossible to understand.

Counsel asserts that, due to health reasons exacerbated by work-related stress, [REDACTED] had to leave her job and the applicant is now the sole source of income. Counsel asserts that, if the applicant were to leave the United States, [REDACTED] would not have any income to pay the various bills.

[REDACTED] in her affidavit, states that she loves her husband with all her heart and soul and that life without him is not a thought she can bear. She states that her employer will be relocating to Kentucky and that, when she is laid off, the applicant's income will be extremely necessary to pay their debts because her unemployment will not be sufficient. She states she would be forced to sell the condominium that they own and the vehicles they have purchased. She states she does not know how she would make ends meet without the applicant's income and their debts are based on both of their incomes. She states that they love, respect and support each other, as is shown by the applicant being the sole person present at the hospital when she had to undergo an operation in 2002. She states that every time she has been ill the applicant has been there to care for her. She states that, in 2003, the applicant was her main source of comfort when she suffered a miscarriage. She states that the applicant has become very close to her family, especially her parents, whom they try to visit every weekend. She states that she and the applicant try to help her family with chores since they are limited in the amount of chores they can do on a daily basis because her mother cares for her grandmother, who is partially paralyzed, her mother has a large hernia and her father has diabetes.

An unsigned resignation letter from [REDACTED] to her supervisor states that she is resigning because she did not receive adequate training to perform her daily responsibilities to a satisfactory level, which has added an enormous amount of work-related stress, affecting her overall health. The letter states that she must do what is best for her physical well being by attempting to secure employment with another employer. A leave of absence application form indicates [REDACTED] was absent from work from January 12, 2005 until January 21, 2005, because of illness. A second leave of absence application form indicates that [REDACTED] was absent from work from January 25, 2005 to February 1, 2005 for a urinary tract infection and back spasm. Medical documentation indicates that, on January 12, 2005, [REDACTED] was under a doctor's care for sinusitis, asthma and tonsillitis and was able to return to work on January 24, 2005. While the medical documentation indicates that [REDACTED] had some medical problems in January 2005, it appears that these particular medical problems were resolved prior to January 24, 2005, the date on which she was cleared to return to work. There is no indication that [REDACTED] continues to suffer from asthma. Even if [REDACTED] regularly suffers from asthma, which may be triggered by emotional stress, the documentation does not provide a diagnosis, information in regard to the effect the condition would have on her ability to perform her work duties or daily activities, whether she requires long-term medical care, what the prognosis is for her condition, whether her treatment requires the presence of the applicant or that she would be unable to receive appropriate medical treatment in the absence of the applicant. Medical documentation also indicates that, on January 31, 2005, [REDACTED] was initially seen by a chiropractor and was scheduled for a follow-up visit on February 1, 2005. The medical documentation in regard to the chiropractor states that it is too early to determine the length of time [REDACTED] will be treated. While the medical documentation from the chiropractor indicates [REDACTED] is under his care, the documentation does not provide a diagnosis, information in regard to the effect of [REDACTED] condition on her ability to perform her work duties or daily activities, whether she requires long-term medical care, what the prognosis is for her condition, whether her condition is related to stress, whether the applicant's presence is required for her treatment, or whether she would be unable to receive appropriate treatment in the applicant's absence. As such the medical documentation fails to establish that [REDACTED] health prevents her from seeking new employment. The medical evidence also fails to indicate that [REDACTED]

█ illnesses are related to the applicant's immigration situation, that her treatment requires the presence of the applicant or that she would be unable to provide herself with appropriate medical needs in the absence of the applicant.

Financial records report that, in 2002, █ earned approximately \$31,324. While the medical documentation indicates that █ may have health conditions, it does not, as previously noted, establish that she is unable to perform work duties or daily activities due to her medical conditions or that the applicant's absence would result in █ inability to function on a daily basis. While █ may have to lower her standard of living and move from her current accommodations, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to █ if she had to support herself without income from the applicant, even when combined with the emotional hardship described below.

As discussed above, the record does not demonstrate that █ suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly experienced by aliens and families upon removal. The AAO acknowledges that distress █ would feel if separated from the applicant. However, once again this is not a hardship beyond that commonly suffered by aliens and families upon removal. Additionally, the record reflects that █ has family members, such as her father and mother, in the United States who may be able to assist her financially and emotionally in the absence of the applicant.

Counsel asserts that █ would suffer extreme hardship if she accompanied the applicant to Mexico because she has no family ties or any other connection to Mexico and has never lived in or spent time as an adult in Mexico. Counsel asserts that █ cannot read or write Spanish, she has lived her entire life in the United States, both of her parents are U.S. citizens, and apart from her relationship to her husband, has no connection with Mexico. Counsel asserts that █'s relocation to Mexico would involve a difficult acculturation process, which would subject her to greater health and personal risks on account of higher crime and poverty rates.

█ in her affidavit, states she would have to liquidate her and her husband's assets, such as selling their cars and condominium, canceling her 401(k), canceling life, health and dental insurance, and closing checking and savings accounts, which would take time during which she would be separated from the applicant. She states that she would have a difficult time paying the bills while she is liquidating their assets. She states that, while they do not currently have any children, she does not want to raise a child outside the United States. She states that her parents and grandmother would suffer because they would miss her and the applicant very much and would not be able to spend time with any children who may be born of their marriage. She states that she thinks it is very important for her child to spend time with her parents because she was unable to spend time with her grandparents growing up and has always felt like she missed out on something. She states that she and the applicant would not be able to make enough money to come back and visit and would be lucky to make sufficient money to be able to call her parents once a month. She states that she would, therefore, lose all ties with the rest of her family and friends. She states that she has no idea as to whether she would be able to secure a job in Mexico because, while she speaks Spanish fluently, she does not read or write it well. She states that she is unsure whether she could get health insurance or unemployment benefits in Mexico. She states that they would have to depend on others, such as the applicant's family who resides in Poza Rica, Vera Cruz, at least in the beginning, and they would have to start from scratch. She

states that she may have to stay alone with the applicant's family in a small, over-crowded house with no modern day conveniences while he searches for work.

Having analyzed the hardships [REDACTED] and counsel claim she would suffer if she were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. Country conditions reports submitted by counsel describe extensive poverty, high crime rates and human rights abuses in Mexico. They indicate that in the Mexican State of Vera Cruz, 21% of urban homes and 82.8% of rural homes exist in poverty. However, there is no evidence in the record to establish that the applicant and [REDACTED] would live in poverty if they relocated to Mexico. There is no evidence that [REDACTED] and the applicant would be unable to find any employment in Mexico. Additionally, economic detriment of this sort is not unusual or extreme. See *Perez v. INS, Supra*; *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). The AAO also finds the record fails to demonstrate that [REDACTED] would be a victim of the human rights abuses or crime detailed in the country condition reports submitted for the record. There is also no evidence in the record that [REDACTED] suffers from a physical or mental condition that could not be treated in Mexico. There is no evidence to establish that [REDACTED] family and friends would be unable to maintain contact with her at all. While the hardships that would be faced by [REDACTED] with regard to relocating to Mexico--adjusting to the culture, economy and environment; separation from friends and family; the separation of any future child from her friends and family; a potentially reduced quality of health care; and her and any future child's inability to obtain benefits and education they would receive in the United States--are unfortunate, they are what could be expected by any spouse accompanying a removed alien to a foreign country. 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 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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise 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, Supra*. *Perez v. INS, Supra*.; *Matter of Pilch, Supra*.; *Matter of Shaughnessy, Supra*. "[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 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 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.