U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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MAY 01 2007

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, Los Angeles, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her spouse, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband and children would suffer extreme hardship if the applicant were required to return to Mexico, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.

Section 212(i) of the Act provides that:

> 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that on or about October 13, 1996, the applicant attempted to obtain admission to the United States by presenting a false document to an immigration officer in an attempt to enter the United States.

Thus, the applicant attempted to enter the United States by fraud. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). A Form I-130, Immigrant Petition for Alien Relative, filed on behalf of the applicant, was approved on July 21, 1997. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on December 10, 1999, and the instant Form I-601 was filed on September 20, 2001. She does not dispute her inadmissibility. Rather, she is filing for a waiver of her inadmissibility.

The record contains several references to the hardship that the applicant's children would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or her children cannot be considered, except as it may affect the applicant's husband.

Thus, the first issue to be addressed is whether the applicant's return to Mexico would impose extreme hardship on her husband, the qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

Court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 United States 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 that:

> 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). In addition, the Ninth Circuit Court of Appeals has 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 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 husband is a thirty-eight-year-old citizen of the United States. He has been a citizen since 1999, and has lived in the United States for nineteen years. He and the applicant have been married since August 2, 1996, and have two United States citizen children together; they are ten and four years old, respectively. The applicant's husband works two jobs so that his wife can provide full-time childcare to the couple's two sons. The applicant's husband also has a United States citizen daughter from a previous relationship.

The record contains an affidavit from the applicant, dated August 26, 2004. She states that her husband is the person she knows and trusts the best; that her husband takes care of her and the couple's children; that her husband is her only confidant; that she and her husband are creating a future for the family; that she would be emotionally and psychologically devastated if she were forced to return to Mexico; that it would be difficult for her husband to move to Mexico, since all of his family members live in the United States; that her children would not be able to adapt to life in Mexico, as they have never been there; that her children would not be able to remain healthy in Mexico; that the couple would not be able to support themselves in Mexico; that she, her husband, and their children would not be able to live with her parents, since three of her siblings live with her parents and the house would be too crowded; that her children do not know how to read and write in Spanish; that her children would miss her husband's parents if they were to move to Mexico; that her children would miss their cousins and friends if they were to move to Mexico; and that she regrets misrepresenting herself and is very sorry and remorseful for doing so.

The record also contains an affidavit from the applicant's husband, also dated August 26, 2004. He states that the applicant is the person he trusts and loves the most; that he cannot imagine how terrible life would be without the applicant; that the applicant is a wonderful person; that the applicant loves and respects him; that the applicant is the primary caretaker and manager of the couple's home; that the applicant is his only confidant; that the applicant has always sacrificed herself and put the family first; that she is an excellent mother and wife; that he and the applicant are creating a future for the family; that he would be emotionally and psychologically devastated if the applicant were forced to return to Mexico; that if he moved to Mexico with the applicant, he would no longer be able to see his parents and siblings; that it would be difficult, if not impossible, to start over in Mexico; that he has a house, medical insurance, good schools for his children, and a great job; that it would be impossible to raise a family with the wages paid in Mexico; that if the applicant returns to Mexico the family would be destroyed; that the couple's children would not be able to adapt to life in Mexico; and that without health insurance he fears that the couple's children would not be able to remain healthy in Mexico.

The record also contains several letters that attest to the applicant's good moral character.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and

environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS,* 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS,* 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also that, "[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). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In her appellate brief, counsel contends that the hardship the applicant's husband would face upon his wife's return to Mexico rises to the level of "extreme hardship." Counsel also contends that the applicant's children, both United States citizens, would also face extreme hardship. However, as noted previously, hardship to the applicant's children is not a consideration in this case. Congress has specifically limited application of the section 212(i) waiver to cases where it can be shown that extreme hardship would befall a spouse or parent of the applicant.

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to depart the United States, regardless of whether her husband and children accompany her to Mexico.

Counsel notes the closeness of the family, stating the following:

> Separation from his daughter and or his wife and children would amount to extreme hardship because he would be forced to choose whether to remain in the United States to continue to be with his daughter and pay child support or to be forever separated from his wife and other children forever.

Counsel also contends that the applicant's husband would face extreme hardship if he returned to Mexico:

> [The applicant's husband] also has his entire immediate family in the United States. They all have legal status in the United States. Both of his parents live in Palmdale, California. All of his siblings live in Palmdale or close by.

Counsel notes that, while he is in good health, the applicant's husband has health insurance so that, in the event he does become ill, he will be able to see a doctor without causing financial harm. Counsel states that Mexico is currently suffering a severe economic crisis, and that the school system is in disarray. Counsel states that if the applicant's husband remained in the United States without the applicant, he would have to send money to the applicant in Mexico and continuing paying the mortgage.

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 husband will face extreme hardship if the applicant returns to Mexico. Particularly if he remains in the United States with the couple's children while the applicant relocates to Mexico, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain and emotional hardship he would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. The fact that the applicant's husband has an extended family network in Southern California, to whom he is very close and would presumably be able to assist him with the couple's children in the applicant's absence, further diminishes the claim that separation from the applicant would be harder for him than for other spouses in similar situations. That the applicant would lose health insurance coverage if she returns to Mexico would also be a common result of deportation, and does not rise to the level of "extreme." Nor are there any medical issues present in this case that would exacerbate the hardship that the applicant's husband would face upon his wife's return to Mexico.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the district director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or

exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.