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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]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: SEP 21 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Chicago, Illinois, 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 sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated June 6, 2002. Counsel submitted a timely appeal.

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 record conveys that the applicant entered the United States in 1992 by presenting to U.S. immigration officials a *permanent resident card* which she had purchased for \$1,200. *Record of Sworn Statement, dated March 29, 2001*. The evidence in the record supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act as the applicant sought to procure entry into the United States by fraud and willful misrepresentation of a material fact.

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 in pertinent part 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 a 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 consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is Mr. Silvino Mendoza, who is a lawful permanent resident. 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).

“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*, 22 I&N Dec. 560, 565 (BIA 1999). 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 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).

Extreme hardship to the applicant’s spouse 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.

Counsel states that the [REDACTED] family will suffer extreme emotional and psychological problems if the waiver application is denied. He indicates that the applicant’s husband is a “seasonal construction worker” and is not able to properly care for his children. Counsel states that the applicant’s husband relies on the applicant’s income when he is unemployed. Counsel states that [REDACTED] does not want to return to Mexico for economic and emotional reasons.

The record contains income tax returns; W-2 statements; letters from employers, the applicant, her husband, and friends; birth certificates; a marriage license; and other documents.

The record fails to establish that the applicant’s husband would experience extreme hardship if he remained in the United States without his wife.

[REDACTED] asserts that his wife’s income is needed to meet household expenses when he is unemployed. The income tax records and letter from Hotel Inter-Continental Chicago, dated March 30, 2001, indicate that [REDACTED] began full-time employment in 2000, and the W-2 Form reflects she earned \$14,468 in the year 2000. The W-2 Form in the record shows [REDACTED] was employed with [REDACTED] in the year 2000, earning \$16,043. The Biographic Information (Form G-325A) and the letter dated September 9, 1999 from Star Nissan indicate that he was employed in sales, earning \$7.00 per hour, with Star Nissan. Although the record does not contain documentation of the [REDACTED] household expenses, the record clearly

conveys that [REDACTED] contributes one-half of the family income. Thus, the AAO finds that the [REDACTED] family, which includes two children, would endure financial hardship if the applicant were to leave the United States.

The AAO will now consider whether the applicant's husband would experience extreme hardship if he joined the applicant in Mexico.

The conditions in Mexico, the country where the applicant's husband would live if he joined her, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Counsel indicates that [REDACTED] does not want to return to Mexico for economic reasons. Court decisions have shown that the difficulties the [REDACTED] may experience in obtaining employment in Mexico and the general economic conditions in that country are insufficient to establish extreme hardship. *See, e.g., Ramirez-Gonzales v. Immigration and Naturalization Service*, 695 F.2d 1208, 1211-13 (9th Cir.1983) (upholding BIA finding that [REDACTED] testimony and unsupported allegations are insufficient to establish inability to find employment in Guatemala); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his children, who are 14 and 9 years old, is a relevant consideration.

Counsel states that the [REDACTED] children, who have never lived in Mexico, have assimilated into the American culture, and speak mostly English, would experience emotional distress as they would be uprooted from their school, community, and church.

With regard to the education of a child, in *Prapavat v. I.N.S.*, 638 F.2d 87, 89 (9th Cir.1980), the Ninth Circuit stated that the hardship to the petitioners' United States citizen daughter must be considered. It stated that:

The child, born in this country, has spent her entire life here. She is enrolled in school, a factor of significance. *See, e. g., Wang*, 622 F.2d at 1348 n.7; *Jong Shik Choe v. I. N. S.*, 597 F.2d 168, 170 (9th Cir. 1979); *Urbano de Malaluan v. I. N. S.*, 577 F.2d 589, 595 n.5 (9th Cir. 1978). If her parents are deported, this American citizen child will be uprooted from her native country where she has spent her entire life, and taken to a land whose language and culture are foreign to her.

In *Ramos v. I.N.S.*, 695 F.2d 181, 187 n. 16 (5th Cir.1983) the Fifth Circuit noted the "great difference between the adjustment required" of infants going to a parent's homeland and school age children facing the same fate. In *Jara-Navarrete v. I.N.S.*, 813 F.2d 1340, 1342 (9th Cir.1986) the Ninth Circuit stated that U.S. citizen children must be given individualized consideration. In *Ravancho v. I.N.S.*, 658 F.2d 169, 175-77 (3d Cir. 1981) the court stated that consideration must be given to the effect of a move to the Philippines would have on an eight-year-old American citizen. In *In Re Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA held that to uproot the respondent's 15-year-old daughter at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship to her. The Ninth Circuit in *Casem v. INS*, 8 F.3d 700 (9th Cir. 1993), and cases cited therein, observed the difference between the adjustments required of very young children accompanying their parents to a foreign country and those faced by children already in school. *Matter of Andazola*, 23 I&N Dec. 319, 333 (BIA 2002).

The AAO finds that the record suggests that the applicant's children would endure extreme hardship at this stage in their education and social development if they live in Mexico. However, this finding is not sufficient, in itself, to establish extreme hardship to [REDACTED] if he were to join his wife 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 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 the applicant 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.