



U.S. Citizenship  
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HL

[Redacted]

FILE:

[Redacted]

Office: PHOENIX, ARIZONA

Date: **AUG 15 2008**

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 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 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 admission into the United States by fraud or willful misrepresentation. Ms. Wilken's spouse is a citizen of the United States. 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 would be imposed on a qualifying relative. *Decision of the District Director*, dated February 27, 2006. The applicant filed a timely appeal.

In the Form I-290B, Notice of appeal to the Administrative Appeals Unit (AAU), counsel indicated that 90 days would be needed to submit a brief and/or evidence to the AAO. In a fax dated June 12, 2008, the AAO requested that counsel submit the brief and/or evidence as stated in the appeal notice. As of this date, no brief or additional evidence has been submitted into the record. Thus, the record as constituted is complete.

The AAO will first address the findings of inadmissibility.

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 reflects that on July 24, 1987, the applicant was charged with attempting to gain entry into the United States by presenting someone else's immigration documents; she was not prosecuted, but was returned to Mexico. Based on the record, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, her identity, so as to gain admission into the country.

The AAO will now consider whether the grant of a waiver is warranted.

The section 212(i) waiver for fraud and misrepresentation states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the

applicant will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In the notice of appeal, counsel stated that the submitted evidence established extreme hardship to Mr. [REDACTED].

The record contains, among other documents, birth certificates, letters, a behavioral health evaluation, income tax records, a listing of relatives residing in the United States, a projected statement of changes in revenue and expenditures, a Decree of Dissolution of Marriage or Legal Separation, and a marriage certificate.

The February 2, 2006 letter by [REDACTED] D.O., stated that he has been [REDACTED]'s physician since June 2005 and that [REDACTED] had been diagnosed with an anxiety disorder for which he has been taking different medications. [REDACTED] stated that most recently while under his care [REDACTED] has been prescribed Zoloft and has been doing well on this regime.

The behavioral health evaluation by [REDACTED], Ph.D., conveyed that [REDACTED] is presently employed as a cement truck driver, a position he has held for two years. He stated that [REDACTED]'s first

marriage lasted 20 years and that he has a daughter from that relationship who is now 24 years old. Mr. [REDACTED] stated that after 18 years of marriage, [REDACTED]'s wife decided to become a police officer, which decision brought about their divorce. At the same period of time, [REDACTED] stated that [REDACTED]'s step-father died, his wife came down with cancer, and his daughter developed dysfunctional adolescent behavior.<sup>1</sup> In summary, [REDACTED] stated that [REDACTED] could not survive or ever be happy in Mexico and that the deportation of his wife would effectively end his marriage, creating a traumatic syndrome from which Mr. [REDACTED] would find great difficulty recovering in a healthy manner.

The U.S. Department of State information sheet about Mexico describes, among other things, crime, and medical facilities. The Bureau of Western Hemisphere Affairs background note on Mexico, dated December 2005, describes the geography, people, government, economy, political conditions, and other characteristics of Mexico. It is noted that the per capital gross domestic product is \$6,517, which is ranked 51 in the world.

The record contains letters from family members and friends in which [REDACTED] is described as having a difficult divorce, and as having a close and positive relationship with his present wife. *Letter from [REDACTED]*; *Letter from [REDACTED] and [REDACTED]*; *Letter from [REDACTED]*

[REDACTED] earns \$15.30 per hour, working 40 hours each week, with Asphalt Paving & Supply, Inc. *Letter dated August 29, 2005 by [REDACTED], payroll clerk.*

The applicant has been employed by [REDACTED], LLC since February 26, 2005. *Letter dated August 29, 2005 by [REDACTED], V.P. Operations.* She earns approximately \$800 each month. *Earnings statements by [REDACTED] LLC.*

Income tax records for 2004 show [REDACTED]'s income as \$26,059 and 2003 records show it as \$24,863.

The Washington Mutual Home Loans statement dated January 13, 2004 reflects monthly principal of \$1,004, and an ending balance of \$114,495.

In his letter, [REDACTED] stated that his entire family lives in the United States; that he had been married for 20 years before divorcing his first wife; that his daughter was born in 1981 during his first marriage; and that during the last three years of his marriage he and his wife had differences, which caused him to feel depression, lack of self-worth, and unhappy. [REDACTED] stated that he does not speak Spanish and is not sure of the job market in Mexico. He indicated that he is an only child and is concerned about his parents, who are in their 70s and 80s. He stated that he has a close relationship with his mother, who lives alone. He stated that the applicant plays a large part in his life.

In rendering this decision, the AAO has carefully considered the evidence contained in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's spouse if he remained in the United States without the applicant.

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<sup>1</sup> [REDACTED] also stated that "the grandmother within whom lived died."

The documentation in the record is insufficient to establish that [REDACTED]'s income is not sufficient to meet his monthly expenses. The projected statement of changes in revenues and expenditures for the month ending March 31, 2006 indicates that [REDACTED]'s current expenditures total approximately \$3,000 each month. However, other than the mortgage statement, there is no other documentation in the record to corroborate household expenses. Moreover, there is no documentation to establish why there would be an increase of \$3,604 in expenses if the applicant were to move to Mexico. For example, the applicant does not explain from where the projection of \$933 in rent/housing is derived. Consequently, the record fails to show that the applicant's spouse would experience extreme financial hardship.

With regard to the behavioral health evaluation by [REDACTED], although the input of a mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

[REDACTED]'s physician indicates that [REDACTED] has an anxiety disorder for which he takes medication; however, there is no documentation in the record substantiating that [REDACTED] has a history of an anxiety disorder for which he takes medication.

In considering the hardship factors raised here, both individually and cumulatively, the AAO finds that the record as presented fails to establish extreme hardship to [REDACTED] in the event that he were to remain in the United States without the applicant.

The record is insufficient to establish that the applicant's husband would experience extreme hardship if he were to join his wife to live in Mexico.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant 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).

[REDACTED] indicates that he does not speak Spanish and is uncertain about finding employment in Mexico. U.S. court and BIA decisions that have shown that difficulties experienced in obtaining employment are insufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

Documentation in the record by the Department of State and Bureau of Western Hemisphere Affairs provides information about the social, economic, and political conditions in Mexico. However, "[g]eneral 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." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

states that he has lived his entire life in the United States and all of his family members live here. 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 that 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 recognizes that's adjustment to the culture and environment in Mexico would be difficult; but these difficulties will be mitigated by the moral support of his wife and his step-sons and in-laws, which are his family ties to Mexico.

Although is an only child, no evidence has been provided to show that he is required to provide daily care to a parent on account of a serious health condition.

In considering the hardship factors raised here, both individually and cumulatively, the AAO finds that the record as presented fails to establish extreme hardship to in the event that he were to join the applicant in Mexico.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.