

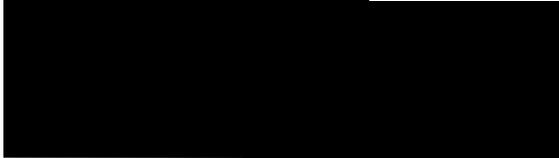
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



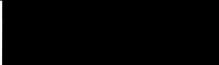
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

#2



FILE:

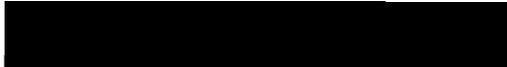


Office: PORTLAND, OREGON

Date: OCT 03 2008

IN RE:

Applicant:



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 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, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

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. 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 October 4, 2006. The applicant filed a timely appeal.

The AAO will first address the finding 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 March 16, 2002, [REDACTED] admitted that she entered the United States from Mexico on three separate occasions by presenting to an immigration inspector a border crossing card and a Mexican passport in the name [REDACTED], and that she had obtained the documents using [REDACTED]'s birth certificate. Based upon this admission, the district director was correct in finding Ms. [REDACTED] inadmissible under section 212(a)(6)(C) of the Act for obtaining and using documents in another person's name to gain admission into the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material 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 an applicant and to his or her child are 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 to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized 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 alternatively, 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.

The record contains, among other documents, birth certificates, a death certificate, letters, photographs, invoices, a marriage certificate, a list of shipments by Mexico Express, Inc., the Personal Responsibility, Work, and Family Promotion Act of 2003, President Bush’s Keynote Address, and an article from the Office of Congresswoman Nancy Pelosi.

On appeal, counsel states that the district director erred in interpreting the facts and applying the law. He indicates that the applicant’s husband must remain in the United States to financially support his disabled father and elderly father-in-law who both live in Mexico and to support his children living in the United States. Counsel states that in Mexico the applicant’s husband would earn \$10 to \$12 a day, preventing him from fulfilling his financial responsibilities. Counsel claims that the facts in *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of W*, 9 I&N Dec. 1 (BIA 1960); *Keh Tong Chen v. AG*, 546 F. Supp. 1060 (D.D.C. 1982); and *Silverman v. Rogers*, 437 F.2d 102 (1<sup>st</sup> Cir. 1970), are distinguishable from those presented here. He states that *Shaughnessy* involved a criminal waiver; *Matter of W*, a criminal waiver and an alien who had been removed more than once and whose only family tie was the wife he married on comparatively brief acquaintance; and *Silverman* and *Keh Tong Chen* applied the standard of exceptional hardship in connection with a two-year foreign residence requirement. Counsel indicates that family reunification is a “central purpose of the waiver,” and that the government’s goal in general is to promote family unification and preserve marriage.

The letter by the applicant's father-in-law conveys, in part, that he and the applicant's 89-year-old father do not work and rely upon his son and the applicant for financial support. He states that he is disabled; that his children live in Oregon and his wife, from whom he is separated, lives with them; and that it is very difficult to find work in Mexico, even if you have a degree in a profession.

The birth certificates reflect the applicant's U.S. citizen children were born on April 22, 1996, August 13, 1990, and June 17, 1993.

In his letter the applicant's husband states, in part, the following. His mother and sister live four blocks away from him and they provide care for his child while he and his wife work. He provides \$100 to his father every month. He and his wife attend weekly church services and he volunteers at his church, helping with church maintenance. His wife has three children from a prior marriage and he has raised them as his own and will need his wife's income to ensure the children achieve their goals. His stepson, [REDACTED] was upset by his father's death and needed psychological treatment for about a year, but has recovered and has many friends and does well in sports. He will earn only \$10 to \$12 a day in Jalisco, Mexico, and will not be able to support his family of six on that income; his wife will not find work there; and if she did, will earn only \$7 a day. If his wife is deported to Mexico, he will have no one to help provide care for his children; he works long hours and his children will be unsupervised. He has lost jobs because of traveling to Mexico to see his wife, and his employer has told him he cannot have time off. He works in a nursery six days a week, 14 to 15 hours a day. His older children had a terrible time when their biological father died. His children need their mother to be present in the United States.

The applicant's mother-in-law states in her letter that she sees the applicant two or three times a week when the applicant brings the children to the house, and she and the applicant talk on the phone. She states that her brother, who works as a field-hand in Mexico, states that there are no jobs in Jalisco. She conveys that if her grandchildren live in Mexico, they will give up their education and opportunities.

The applicant's sister-in-law indicates that she takes care of the applicant's two daughters about two times a week for four to five hours each visit. She states that her brother will not find a job where they are from in Mexico and that her brother supports their father in addition to his own children.

The psychological evaluation of the applicant's son, [REDACTED], conveys that [REDACTED] is 15 years old, and that [REDACTED]'s biological father died in a hunting accident when he was 3 years old. The evaluation states that [REDACTED] had suicidal thoughts in the years after his father's death, that he had erratic behavior and was out of control for a period, and that he received counselin. The evaluation states that the applicant provides emotional and moral support to her son, and that [REDACTED] bonded with his stepfather. The evaluation conveys that the applicant's removal from her son's life "would be a significant destabilizing event and would . . . cause additional and unnecessary psychological trauma through further undesired and unexpected loss." *Psychological evaluation dated June 14, 2006 by [REDACTED] clinical psychologist.*

The employment letter dated March 14, 2006, by Barrett Business Services, states that [REDACTED] earns \$14 per hour as a truck driver, working 60 hours per week.

The record shows that [REDACTED] children are 12, 15, and 18 years old.

The record fails to show that the applicant's spouse would experience extreme hardship if he were to remain in the United States without her.

The documentation in the record fails to show that [REDACTED] income is not enough to support his family if he were to remain in the United States without his wife. The record contains no documentation, other than car insurance statements, to show the household expenses of [REDACTED]. In the absence of documentation of household expenses, the AAO cannot conclude that [REDACTED] will be financially unable to maintain his household and provide care for his children without his wife. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes that Mr. Martinez has had the assistance of his mother and sister, who live near him, to provide care for his children.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship)). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The letter by [REDACTED] in support of the waiver application conveys that he has a close relationship with his wife and stepchildren and is very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED], if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by [REDACTED], is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

Having considered each of the hardship factors raised here, both individually and in the aggregate, it is concluded that these factors do not in this case show extreme hardship to the applicant's husband.

The record fails to establish extreme hardship to the applicant's spouse if he joined her 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).

Although [REDACTED] claims that he will not find a job in Mexico that will pay enough to support his family, financial hardships alone are not sufficient to establish extreme hardship to a qualifying relative, something more is required to combine with economic detriment to demonstrate extreme hardship. See *Matter of Ige*, *supra*.

Furthermore, administrative and judicial decisions have consistently held that difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *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); *Hernandez-Patino v. INS*, 831 F.2d 750 (7<sup>th</sup> Cir. 1987) (Economic disadvantage alone does not constitute 'extreme hardship'); *Chumpitazi*, 16 I&N Dec. 629 (BIA 1978). ("It has long been clear that the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship."); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9<sup>th</sup> Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

Each of the hardship factors raised here, both individually and in the aggregate, do not in this case demonstrate extreme hardship to the applicant's spouse if he were to join his wife in Mexico.

In summary, it is concluded that the factors in this case do not 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 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. The application will be denied.

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