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[REDACTED]

FILE:

[REDACTED]

OFFICE:

SAN FRANCISCO, CA

Date:

**JAN 15 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. The record indicates that the applicant falsified information on the Optional Form 156 (Form OF-156) visa application when she applied for her Border Crossing Card at the U.S. Consulate in Guadalajara in January 2002.<sup>1</sup> The applicant obtained the above-referenced nonimmigrant visa and subsequently entered the United States in February 2002. The applicant was thus 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 having procured admission to the United States by fraud or willful misrepresentation.<sup>2</sup> The applicant 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 her U.S. citizen 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 Form I-601, Application for Waiver of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 22, 2005.

In support of the appeal, counsel submits a brief, dated October 11, 2005; a declaration from the applicant's U.S. citizen spouse, dated September 28, 2005; and proof of the applicant's spouse's mother's and siblings' lawful status in the United States. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides 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 immigrant 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....

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<sup>1</sup> Specifically, the record establishes that the applicant noted on said form that she was single, that her sister was the only relative living in the United States and that her intentions were to vacation in the United States for one month when in reality, the applicant had married a lawful permanent resident (who became a U.S. citizen in July 2003) on November 16, 2001 and her intention was to travel to the United States and reside permanently with her spouse.

<sup>2</sup> The applicant does not contest the district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) 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.

This matter arises in the San Francisco district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “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). *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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant’s spouse, a U.S. citizen, is the only qualifying relative and hardship to the applicant and/or the applicant’s spouse’s extended family members cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship if the applicant is removed from the United States. As the applicant’s spouse states in his declaration:

I will suffer extreme financial and emotional hardship if my wife [the applicant] cannot legalize her papers. I will suffer extreme emotional hardship because I have had a relationship with [redacted] [the applicant] since she was 18 years old... [redacted] and I are made for each other, she’s my soulmate and I am hers. I think we were meant for each other because we were seeing each other on and off for so many years and neither one of us found anyone else that was so perfect

to marry and start a new life together. We move to Williams, CA in December of 2003.... [REDACTED] and I are committed to our new life together, we are planning a family, and we have hopes for only the best that life can bring.

Both [REDACTED] and I will suffer financially if [REDACTED] would be denied her residency. We have just bought a new home, we also have a second mortgage.... We are trying to get all of our bills in order.... [I]f we loose [REDACTED]'s income, I will be forced into bankruptcy and we will loose everything we have worked so hard for.... [REDACTED] has just been promoted to the position of waitress (instead of bus person) and she is making more per hour plus tips. After 6 months, I will be getting a raise as well at my job as warehouseman. We have the possibility of a wonderful life....

We would like to start a family, we would like so many things. [REDACTED] has two sisters who have lived in the U.S. for many years. Both have their residency. My parents and siblings are all here in Northern California.... If [REDACTED] should be denied, it would destroy all of our hopes and dreams and cause irreparable damage emotionally and financially.

Declaration of [REDACTED] dated October 27, 2004.

It has not been established that the applicant's spouse will suffer extreme emotional hardship were the applicant removed from the United States. Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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 exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

Moreover, the record indicates that the applicant's spouse has numerous family relatives that live in the United States, including his parents and three siblings; it has not been established that they would be unable to assist the applicant's spouse should the need arise. The applicant has also failed to establish that the applicant's spouse, a native of Mexico, would be unable to visit the applicant on a regular basis. 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)). Finally, while the AAO sympathizes with the applicant and her spouse regarding their desire to start a family, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

As for the financial hardship referenced by the applicant's spouse, the AAO notes that 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."); *Shoostary 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).

The record indicates that the applicant's spouse earned over \$35,000 in 2002, which is well over the 2008 poverty guidelines, and has assets valued at over \$313,000. *See Form I-864, Affidavit of Support*, dated August 9, 2003. It has thus not been established that this type of income, without any additional financial support from the applicant, would cause the applicant's spouse exceptional financial hardship. Moreover, no evidence has been provided to substantiate that the applicant is unable to obtain gainful employment in Mexico, thereby providing her with the ability to support herself and assist with the U.S. household expenses if the need should arise. Finally, as previously referenced, the applicant's spouse has a vast support network in the United States; it has not been established that they would be unable to assist the applicant's spouse should he find himself in a financial predicament due to the applicant's inadmissibility. While the applicant's spouse may need to make adjustments with respect to his financial situation while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme financial hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse references the following hardships were he to relocate abroad with the applicant due to her inadmissibility:

My family are all legally in the United States: my mother...my siblings... [redacted] [the applicant's sibling] has 2 USC children, and [redacted]s [the applicant's sibling] has 2 USC children and one on the way. They are all now living in houses on the same block in Yuba City, CA. We have all lived either in the same house or very near one another for many years.

My four siblings are starting a bakery in Yuba city, and [redacted] and [redacted] and I are going to start a restaurant there. My wife and I will be moving to Yuba City very soon.

I am very close to my family, I see them every day. I am close to the children. My wife and I take care of them while their mothers work at the bakery. We immigrated from Mexico

together, when I was in the second grade. I went all the way through school in the U.S. I wasn't born in the U.S., but I am an American by education and the fact that I have lived here so long. Mexico is not my home. I have no one in Mexico except an older brother who is a poor rancher in Colima, Mexico.

If I had to return to Mexico I would lose my house, my cars, my furniture, everything I have worked for. I don't know what work I would be able to do there. Since my wife and I have no children, being separated from my nieces and nephews would be that much harder. I truly don't know how I would be able to bear the separation from my family....

Declaration of [REDACTED], dated September 28, 2005.

It has not been established that a separation from his extended family would cause the applicant's spouse hardship beyond that experienced by others in the same situation. In addition, it has not been established that the applicant's spouse would be unable to travel to California regularly to visit his extended family and/or that his extended family, many who are natives of Mexico, would be unable to visit the applicant's spouse in Mexico. Finally, no documentation has been provided to establish that the applicant and/or his spouse would be unable to obtain gainful employment in Mexico that would ensure financial viability.

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 U.S. citizen spouse will face extreme hardship if the applicant is removed. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that his financial and/or emotional hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law. 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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