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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: COLUMBUS, OHIO

Date: JUN 30 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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, 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 Field Office Director, Columbus, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud or willful misrepresentation. She is married to a Lawful Permanent Resident (LPR) of the United States and has five U.S. citizen children. She seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her LPR spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on January 14, 2008.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was erroneous and an abuse of discretion.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 record indicates that on January 11, 1993, the applicant presented a Form I-551, Border Crossing Card, belonging to another person in an attempt to enter the United States, and pled guilty to violating 8 U.S.C. § 1325, Unlawful Entry, before a U.S. magistrate. As the applicant attempted to enter the United States by fraud or willful misrepresentation, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The applicant filed a previous Form I-601, Application for Waiver of Grounds of Inadmissibility, on November 29, 2005, which was denied on January 31, 2006. A second Form I-601 was filed by the applicant on January 25, 2006, and denied on February 12, 2006. The appeal of this decision was

dismissed by the AAO on August 14, 2007. The applicant filed a new application for adjustment of status and a waiver application on April 4, 2007.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's LPR spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 applicant 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 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.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains, but is not limited to, a brief from counsel; a statement from the applicant; a statement from the applicant's husband; a copy of a prescription for Trazodone; an Internet printout on the drug Trazodone; letters from family and friends attesting to the moral character and good nature of the applicant and her spouse; school records for the applicant's children; a copy of a U.S. State Department Travel Alert, dated October 24, 2007; a copy of a U.S. State Department printout of Country Specific Information for Mexico, dated September 13, 2007; Internet printouts discussing crime and unemployment in Mexico; birth and marriage certificates for the applicant and her husband; birth certificates for the applicant's U.S. citizen children; tax and employment documentation for the applicant and her spouse; a report from psychologist [REDACTED]

discussing the mental state of the applicant's spouse; and pictures of the applicant, her spouse and their five children.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship whether he remains in the United States or relocates with the applicant. Counsel specifically asserts that the applicant's spouse will suffer emotionally and mentally as a result of the applicant's absence, that the applicant's children may become lost in their social lives, school and at home if their mother is not allowed to reside in the United States, and cites the costs of telephone calls and flights to Mexico as financial hardship. Counsel refers to the psychological evaluation by [REDACTED] and further states that the only remedy for the applicant's spouse is for the applicant to remain in the United States. The applicant's spouse states that, if the applicant is excluded, he fears his work schedule will not allow him to raise his children and that he will be unable to support them. The applicant's spouse also states that the costs of telephone calls to Mexico would constitute an extreme financial hardship for him.

As noted above the hardships of non-qualifying relatives are not directly relevant to a determination of extreme hardship in these proceedings. The applicant's children are not qualifying relatives in this case, and as such the impacts of the applicant's removal on them are relevant only to the extent they affect their father.

The AAO acknowledges the psychological evaluation provided by [REDACTED] which contains a discussion of the applicant's spouse's symptoms and diagnoses the applicant's spouse with Major Depressive Disorder. [REDACTED] reasons that, if the applicant is unable to reside with her spouse in the United States, the applicant's spouse will sink further into depression. He concludes that the applicant's spouse does not have the strength or psychological resources to endure a separation from his wife and that he would be unable to manage his own affairs and function in the role of a father if his wife were excluded from the United States.

The AAO accepts [REDACTED] diagnosis that the applicant's spouse is suffering from Major Depressive Disorder at the prospect of being separated from the applicant. While it also notes the applicant's spouse's claim that he would be unable to support his children in the applicant's absence, the record fails to document the current financial burden on the applicant's spouse or the impact of the applicant's removal on that burden. Moreover, the record offers only generalized country conditions information on employment and social conditions in Mexico and is, therefore, insufficiently probative to establish that the applicant would be unable to find employment in Mexico and financially assist her spouse from outside the United States. However, the AAO finds that the applicant's spouse's already-compromised mental health, which is likely to worsen if the applicant is excluded, when considered in combination with the additional responsibilities of being the sole parent for five children, is sufficient to establish that the applicant's spouse would experience extreme hardship if the applicant were to be removed and he remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel has asserted that the applicant's spouse cannot live in Mexico where he would be unable to find employment, where crime is a major social problem and where there may be a lack of access to emergency support services. Counsel refers to U.S. State Department statements and country conditions reports detailing the problems in Mexico.

The applicant's spouse states that he is not sure how he could raise his children in Mexico as jobs are scarce. He asserts that should something happen to him, mentally or physically, he would not receive proper medical care.

Submitted country conditions materials are sufficient to establish that Mexico is struggling to control crime and unemployment, particularly in the areas along the border. The travel alert issued by the U.S. State Department reports that there is no evidence that Americans have been specifically targeted, stating that "U.S. citizens should exercise caution when traveling in unfamiliar areas" and listing the border areas that are currently facing high levels of crime. In the applicant's spouse's biographic questionnaire, he lists his home state as Queretaro, Mexico, which is not identified by the U.S. State Department as an area of concern. The questionnaire also indicates that the applicant's spouse's parents reside in Queretaro and that he and the applicant were married in Queretaro. Biographic information for the applicant identifies Queretaro as the location of her parents' residence and indicates that she lived in Queretaro prior to traveling to the United States. Accordingly, the AAO finds that the record fails to establish that the applicant and her spouse would reside in any of the areas identified by country conditions materials as subject to high levels of crime and, therefore, to demonstrate that the applicant's spouse would be at risk if he relocated to Mexico with the applicant. The AAO acknowledges that the country conditions materials in the record report that Mexico has a high rate of unemployment, but finds that these materials are too general in nature to establish that the applicant's spouse would be unable to obtain employment in Mexico. The record indicates that the applicant's spouse works as an electrician and the record offers no evidence that would demonstrate that skilled workers are unable to obtain employment in Mexico.

Counsel also notes that emergency medical services may not be available in areas experiencing heightened crime, as reported in the State Department's travel alert. As previously discussed, however, there is no evidence that the applicant's spouse would live in an area where crime is a problem and, therefore, be unable obtain emergency care. Thus, the record is not sufficiently probative of the impacts that would affect the applicant's spouse if he moved to Mexico to establish that relocation would result in extreme hardship.

The record, viewed in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will suffer hardship as a result of the applicant's inadmissibility. However, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon

deportation. In the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse from that suffered by other individuals whose spouses have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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 sections 212(a)(9)(B)(v) or 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.