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

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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: MAY 04 2009

IN RE:

[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, Los Angeles, 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 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. lawful permanent resident, [REDACTED], and is the parent of two daughters, one a U.S. citizen and the other a lawful permanent resident. 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 husband and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 27, 2006, at 2.

On appeal, counsel contends that the district director failed to assign appropriate weight to all the hardship factors presented in the record or to consider them in the aggregate. Counsel also contends that the record of proceedings, as supplemented by the additional documents submitted on appeal, compels a finding of extreme hardship and the approval of the waiver application.

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 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 AAO finds the record to reflect that the applicant attempted to enter the United States on January 9, 1996 by using a passport and B-2 nonimmigrant visa that were not issued to her.

Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and must seek a waiver under section 212(i).

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO notes that hardship to an applicant's child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request.

On appeal, counsel raises concerns regarding the district director's reliance on precedent decisions with factual circumstances unlike those in the present proceeding. The AAO finds, however, that the district director cited to certain precedent decisions not for their factual similarity to the present proceeding, but for the insight they provide into the definition of extreme hardship. The AAO also notes that *Matter of Savetaml*, 13 I&N Dec. 249 (BIA 1969), referenced in counsel's brief on appeal, is not relevant to the present matter. It does not involve a section 212(i) waiver application, but addresses a waiver of the foreign-residence requirement under section 212(e) of the Act, 8 U.S.C. § 1182(e). In that *Matter of Savetaml* involves a different waiver statute and a different hardship standard, "exceptional" as opposed to "extreme," its findings are not applicable to this proceeding.

As indicated by counsel, this matter arises within the jurisdiction of the Ninth Circuit Court of Appeals, which has 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). *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.

The AAO now turns to a consideration of the record as it relates to the applicant's claim to extreme hardship.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse if he relocates to Mexico. In an April 6, 2006 declaration, [REDACTED] asserts that neither he nor his wife would be able to find employment comparable to their present positions in the United States, and, consequently, there would not be sufficient income to provide the standard of living that he wishes for his children and wife. He notes that there is widespread age discrimination in the employment field in Mexico, as well as discrimination against women. He also contends that moving his children to Mexico at this stage of their lives would be devastating. Relocating to Mexico, he asserts, would cause them emotional, psychological, and educational damage. He further states that they know only life in the United States, are closely attached to their community, are prospering academically, and are not prepared for leaving the United States. [REDACTED] also contends that his daughters would be severely disadvantaged in terms of their education because the public schooling in Mexico is conducted solely in Spanish, a language in which they lack the necessary fluency, and he would not be able to afford to send them to private English-language schools. [REDACTED] declaration also states that his family would be financially ruined, and that his wife's two relatives in Mexico would not be able to help his family either with money or living space.

While [REDACTED] projects that he and the applicant will have smaller incomes and a lower standard of living in Mexico than they enjoy in the United States, there is no documentary evidence in the record that establishes that relocating to Mexico would prevent [REDACTED] and the applicant from obtaining employment in Mexico and supporting themselves and their children. The Internet printout "Mexico's Jobless Rate Probably Rose in July to Near 5-Year High," projects, as of August 21, 2003, that the jobless-rate report for Mexico in July 2003 will probably exceed 3.3 per cent and thus reach a near five-year high; opines that this signifies that the Mexican economy is sputtering; and notes that some major employers in Mexico are decreasing their work force. The Internet article "Mexico Faces Up to Unemployment Growth" comments that much of Mexico's employment is in unstable, low-wage jobs, with no work-related benefits. The record also contains some sample job postings and advertisements for housing and private English-language schooling in Mexico, as well as currency exchange-rate information. The Internet articles, which address the Mexican economy as a whole, do not provide specific and authoritative information about the actual effects the economic and employment situation in Mexico would have upon the applicant's and [REDACTED] ability to support their family in Mexico. As they relate solely to Mexico City, the record's housing and job advertisements are too narrowly focused to encompass the housing and job possibilities for the applicant and her spouse, particularly since the record indicates that they have relevant ties outside Mexico City. The applicant's Form G-325A, Biographic Information, identifies Mazatlan, Sinaloa as her birthplace and her last residence in Mexico; and [REDACTED] [REDACTED] also identifies Mazatlan as the area where he was employed as an administrative assistant and the applicant was employed as a secretary. [REDACTED] *Sworn Declaration of April 6, 2006*, at 1. Further, the job advertisements are not for positions in [REDACTED] trade, carpentry.

The AAO also notes that the documents in the record do not substantiate [REDACTED] assertions that age and gender discrimination would be significant obstacles to obtaining work in Mexico and that [REDACTED] and his family would, therefore, not be able to survive financially. While the submitted job announcements indicate they are seeking applicants no more than 45-50 years of age, they are too limited in number to establish such discrimination as a prevailing practice that would preclude [REDACTED] or the applicant from obtaining positions for which they have the necessary qualifications. 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)). It should also be noted 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.

Further, while the AAO acknowledges the relocation hardships that [REDACTED] anticipates for his children in Mexico, they are not qualifying relatives in 212(i) waiver proceedings and their hardships may be considered only to the extent that the record demonstrates that they adversely affect their father. In the present matter, the record does not establish how his children’s hardships would affect [REDACTED]

The AAO acknowledges that [REDACTED] would experience hardship in moving to Mexico. However, the evidence of record, even when considered in the aggregate, does not demonstrate that the disruptions and hardships would be greater than those normally associated with a family’s relocation as a result of inadmissibility.

The second part of the extreme hardship analysis requires the applicant to establish that [REDACTED] would suffer extreme hardship if he remains in the United States. In his sworn declaration, [REDACTED] states that the family’s financial stability depends upon his wife’s income, and that his income alone will not cover all of the household’s monthly expenses or his daughters’ needs for food and clothing. [REDACTED] also states that he would have to get a second or even third job, and that he would then not be able to provide the love and emotional support that his daughters need. [REDACTED] attests that without his wife’s U.S. income he will not be able to afford health insurance. He also attests that he will not be able to support households in two countries. In terms of the emotional and psychological toll upon him, [REDACTED] attests that he will suffer from the loss of his wife and also from the suffering and pain that his wife’s absence will cause his daughters. He states that there will not be enough money to pay for travel between the United States and Mexico. The letters from the applicant’s two daughters reflect that they are very close to and dependent upon their mother.

While the AAO acknowledges [REDACTED] financial concerns if he remains in the United States, the record fails to provide sufficient evidence that the applicant's removal would result in extreme financial hardship to her spouse. The record's copies of employers' letters, tax returns, W-2 Forms, bills, bank records and other assorted financial documents demonstrate that the applicant and [REDACTED] have attained a stable and fairly comfortable income level in the United States. However, this documentation does not offer sufficient proof of the applicant's spouse's financial obligations for the AAO to conclude what impact the applicant's removal would have on him. Further, the record, as previously discussed, does not establish that the applicant would be unable to obtain employment in Mexico and assist her family financially from outside the United States.

The AAO notes [REDACTED] statements regarding the emotional suffering he will experience if separated from the applicant. However, it finds the record to provide no documentation to support his claim, e.g., an evaluation prepared by a licensed mental health professional establishing the extent of the emotional hardship that would be experienced by [REDACTED] if the applicant were to be removed from the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

Although the depth of [REDACTED] concern and anxiety over the applicant's immigration status is neither doubted nor 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remains in the United States while she lives outside the United States as a consequence of her inadmissibility.

The AAO has considered, both individually and in the aggregate, all of the hardship factors identified in the present application, with due attention to the ramifications of family separation. The record, however, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, does not support a finding that the applicant's spouse would face extreme hardship if the applicant's waiver application were denied as it fails to distinguish the hardship that would be experienced by [REDACTED] from that of other individuals whose spouses are removed from the United States.

As the evidence has not established that [REDACTED] would face extreme hardship if the waiver request were denied, the applicant has failed to establish statutory eligibility for a waiver

under section 212(i) of the Act. As the applicant is 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.