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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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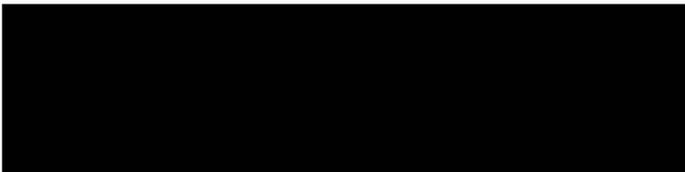
Date **MAY 06 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i), and under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

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.

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).

A handwritten signature in cursive script that reads "Michael Shumway".

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico, the spouse of a U.S. citizen, the mother of five U.S. citizen children, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having attempted to procure entry into the United States by fraud or misrepresentation. The applicant was also found inadmissible pursuant to section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i) for having been unlawfully present in the United States for one year or more. Finally, the district director found the applicant inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), both for having reentered the United States without permission after having been ordered removed from the United States, and for having reentered the United States without permission after an aggregated unlawful presence of more than one year.

The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children. The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The district director also found that, in any event, no waiver is available to the applicant for her inadmissibility pursuant to section 212(a)(9)(C) of the Act. The district director denied the waiver application.

On appeal, counsel contended that the evidence demonstrates that denial of the waiver application would cause extreme hardship to the applicant's husband and, in addition, that the evidence supports that the applicant should be accorded waiver as a matter of discretion. The AAO will first review the determination that the applicant is inadmissible.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

On her Form I-485, which the applicant signed on June 24, 2002, and submitted to USCIS on August 19, 2002, the applicant stated that her most recent entry into the United States was during May of 1990. In a declaration of February 3, 2004, the applicant stated that the person completing her Form I-485 asked her when her first entry into the United States was, and that she had responded correctly to that question, rather than providing the date of her most recent entry into the United States, which she stated, in that declaration, was "approximately March 1997."

The applicant's husband's chronology of his wife's travel to Mexico, provided in a declaration dated February 4, 2004, implied that she departed the United States and went to Mexico during November 1995, whereas the applicant herself, in her February 3, 2004 declaration said that she departed during early 1996.

The record contains a Form I-213 Record of Deportable Alien that shows that the applicant was apprehended by the Border Patrol, on March 4, 1996, near Salton City, California. The applicant was then in possession of a counterfeit Form I-94 Departure Record bearing the name, [REDACTED]. The applicant admitted that she had bought the counterfeit I-94 from an unknown man for \$1,000. The applicant stated that she had entered the United States at Calexico, California using the counterfeit I-94. The applicant was granted a voluntary departure to Mexico.

The record contains another Form I-213 that shows that, on March 6, 1996, the applicant returned to the port of entry at Calexico, California. The applicant applied for entry as a returning lawful permanent resident (LPR), and presented a counterfeit temporary Form I-94 Departure Record bearing the name [REDACTED]. That counterfeit document is in the record. The

applicant subsequently admitted her true identity and that she had bought that document for \$65. A Form I-296 in the record shows that, on March 18, 1996, the applicant was declared excludable and deported.

The evidence in the record, as discussed above, shows that the applicant first entered the United States during May 1990, and then, after a period of unlawful presence, departed, either during late 1995 or early 1996. The record further shows that the applicant entered or attempted to reenter the United States on two occasions during March of 1996. She was granted voluntary departure in the first instance and deported in the second instance.

The applicant asserted that she then spent an entire year in Mexico before again entering the United States, without inspection, in approximately March 1997. The applicant provided various documents to support her assertion that she was in Mexico from March of 1996 to March of 1997, including (1) a Mexican passport, issued to the applicant on April 19, 1996; (2) a Mexican voter's identification, showing that she registered to vote during 1996; (3) a certificate showing that, on January 27, 1997 the applicant's son, [REDACTED], was baptized in Mexico City, Mexico; (4) photographs ostensibly showing the applicant's son, [REDACTED], at various locations alleged to be in Mexico; (5) a letter from a hairstyling school in Mexico City, Mexico, asserting that the applicant attended that school from September 27, 1996 to February 27, 1997; (6) a memorandum, dated January 31, 2004, from a dentist in Mexico City, Mexico, stating that the applicant was treated at his office from December 1996 to February 1997, but not thereafter; and (7) a letter, dated January 29, 2004, from the applicant's sister, stating that the applicant lived with the sister and their mother from March 1996 to March 1997. The AAO finds that the applicant's evidence compels the finding that she was in Mexico during the time she claims.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence prior to April 1, 1997 does not contribute to her inadmissibility pursuant to sections 212(a)(9)(B) or 212(a)(9)(C)(i)(I) of the

Act. Further, although the applicant has been unlawfully present for considerably more than a year since April 1, 1997, the record contains no evidence of a subsequent departure from the United States, which is necessary to trigger inadmissibility pursuant to section 212(a)(9)(B)(i) of the Act, or a departure and reentry, or attempted reentry, as necessary to trigger inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. The applicant is not, therefore, inadmissible pursuant to section 212(a)(9)(B)(i) of the Act or section 212(a)(9)(C)(i)(I) of the Act, and the appeal is sustained pertinent to inadmissibility pursuant to those two sections.

However, as was noted above, the record indicates that the applicant was deported from the United States on March 18, 1996, and reentered the United States, without being admitted, in approximately March 1997. The applicant is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Section 212(a)(9)(C)(ii) of the Act states that inadmissibility under section 212(a)(9)(C)(i) of the Act does not apply to an alien who seeks admission more than ten years after the alien's last departure from the United States. The applicant in this case, however, has admitted that, after being deported in March 1996, she reentered without inspection in approximately March 1997, after an absence of only approximately one year. The exception in section 212(a)(9)(C)(ii) does not apply to the applicant. No waiver of inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act is available.

The AAO will review the director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, although counsel did not appear to dispute it. The evidence, described above, demonstrates that the applicant, on two occasions, entered or attempted to enter the United States using counterfeit documentation and thereby represented that the documentation was legitimate and had been issued to her. The evidence in the record is, therefore, sufficient to show that the applicant committed fraud or misrepresentation as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted. The AAO notes, however, that even if the applicant were granted waiver of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, she would remain inadmissible pursuant to section 212(a)(9)(C)(i) of the Act.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

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 under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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).

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).

The record contains an undated letter from a school bus driver who drove one of the applicant's children and who is also a friend of the applicant. That letter states that the applicant is a responsible house wife and mother and is essentially a character reference. It has no relevance to any hardship that might be imposed by denying the waiver application.

The record contains a letter, dated January 11, 2004, from a school teacher who stated that she currently teaches the applicant's son, [REDACTED], who has a learning disability, as well as a heart defect. She voiced concern that [REDACTED] heart defect and learning disorder might both be accorded insufficient expert attention if the applicant went to Mexico, whether or not [REDACTED] accompanied her.

The record contains a letter, dated January 12, 2004, from a school teacher who stated that she has taught [REDACTED] one of the applicant's children. Although that letter is primarily a character reference, the teacher did state,

[S]hould [the applicant have] to leave the United states [sic] the effects on her children would be extremely damaging. Aside from the obvious emotional damage her children would suffer I believe this would cause serious educational damage, as their support would be lost.

The record contains a letter, dated January 13, 2004, from a teacher who stated that she is teaching the applicant's sons, [REDACTED]. She stated that [REDACTED] currently requires, and is receiving, speech therapy. She stated that [REDACTED] receives considerable support and assistance from the applicant, and that if the applicant were no longer in the United States his education would suffer greatly from the removal of that support. She also noted that [REDACTED] is currently in a small class, and that this and the additional services offered to him in the United States are important to his development. She stated those services and the small class size might not be available to him in Mexico. She also stated that separation from his mother might cause [REDACTED] an emotional and behavioral setback.

In a letter dated January 14, 2004, [REDACTED], a speech therapist stated that the applicant's son has mild to moderate apraxia of speech, which causes him academic and social difficulty, and for which he receives a half hour of therapy twice per week. He stated that this assistance might not be available to [REDACTED] in Mexico. He further stated that [REDACTED] "dominant expressive language" is English, and that if he is obliged to begin speech and curricula in Spanish, he would suffer a setback of at least a year.

The record also contains a report, dated November 7, 2003 and also signed by [REDACTED], that states that [REDACTED] primary and dominant language is Spanish. The AAO notes that those two statements, made by the same person, separated in time by just over two months, are manifestly mutually contradictory.

The letter contains another letter, also dated January 14, 2004. The writer, [REDACTED], stated that she taught [REDACTED] in her bilingual kindergarten class, taught [REDACTED] in second grade, taught [REDACTED] in second grade for two years, and later became [REDACTED] godmother. She stated that both [REDACTED] and [REDACTED] struggled socially and academically and described the active intervention and support provided by the applicant. She further stated that the applicant's husband works long hours and is unable to render as much academic assistance to his children as the applicant does. She stated that the applicant's continued assistance is therefore necessary to their performance, but noted that, as English is now their dominant language, they would suffer academically and socially if they were obliged to accompany their mother to Mexico to live. That teacher, who previously stated that she is bilingual in English and Spanish, stated,

*The [Applicant's] children, having been born in the [United States] and having developed their English skills through our bilingual program, are, to different degrees,*

more English dominant in their language production than in their mother tongue, Spanish.

The teacher implied that the children would therefore be handicapped if forced to attend school in Mexico.

The record contains a letter, dated January 14, 2004, from another teacher, who stated that she has taught two of the applicant's children. She noted that [REDACTED] has a learning disability, but without providing additional detail. She indicated that Mexico's educational system does not guarantee special education. She did not otherwise address how the applicant's absence from the United States could cause hardship to anyone.

The letter contains another January 14, 2004 letter. The writer stated that her daughter was a classmate of the applicant's son, [REDACTED], and notes that [REDACTED] was diagnosed with special needs.

The record contains a letter, dated January 14, 2004, from [REDACTED] a medical doctor practicing in Hayward, California. [REDACTED] stated,

The hardship the children would suffer if [the applicant] is denied a green card is extreme. [The applicant] is the primary caretaker, thus the separation would be devastating. If the children moved to Mexico, they would suffer educational consequences and setbacks. Currently [REDACTED] + [REDACTED] are in special education. In addition, [REDACTED] needs continued follow-up for his heart murmur (VSD).

The record contains a letter, dated January 27, 2004, from [REDACTED], a medical doctor practicing in Oakland, California. That letter states that the applicant's son, [REDACTED] is an outpatient at the Children's Hospital in Oakland. It states that he was born with a ventricular septal defect (VSD), which is a heart defect." It states that he was seen in January 1999, February 2002, and November 2003, is now "doing well from a clinical standpoint," and is scheduled to return in three years. That letter states, "It is important for [REDACTED] mother, [the applicant], to remain in the United States so she can provide follow[-]up for [REDACTED] but does not state why that infrequent function could not be performed by another family member. It also states that, "If [REDACTED] develops medical complications, it would be beneficial for him to be near a pediatric cardiac center that is familiar with his condition." The letter does not state that no such facility exists in Mexico.

The record contains a letter, dated January 29, 2004, from the applicant's sister, who stated that the applicant stayed with her and their mother from March 1996 to March 1997, during which time she was distressed, nostalgic, and depressed because she missed her sons and husband. That letter said that the applicant sometimes cried when looking at photographs of her children.

The AAO notes that although all of the preceding evidence, including the five letters from school teachers, the letter and the report from the speech therapist, the two doctor's letters, the letter from the mother of one of [REDACTED] classmates, and the letter from the applicant's sister, addresses

harm that might be occasioned to the applicant and the applicant's children, none of it directly addresses any hardship that denying the waiver application would cause the applicant's husband.

The record contains an undated letter from the principal of a school that three of the applicant's children attend. She stated that if the applicant leaves the United States her family will suffer great financial hardship as the children will have to attend daycare. She also noted that the applicant helps her children with their homework, and that additional economic hardship will result if the children require tutoring. Finally, she stated, "Beyond the academic and financial burden that the deportation of [REDACTED] will present, is the emotional trauma that this act will cause for her children and husband." The principal did not suggest any factor that would render the emotional hardship that would accompany denial of the instant application more severe than in an ordinary case of the deportation of a mother. That letter does, though, at least in passing, discuss hardship that would result to the applicant's husband.

The record contains a declaration, dated February 3, 2004, from the applicant herself. She stated that she went to Mexico in early 1996 to be with her sister, who was gravely ill with cancer. In addition to her itinerary, the applicant reiterated the description of her sons' learning and language disabilities. She asked that her husband and children not be punished for her misdeeds, but did not explicitly detail the hardship that denying the waiver application would cause her husband.

The record contains a letter, dated February 4, 2004, from the applicant's husband. He stated that his wife left the United States during November 1995 to be with her sister, who had cancer, and that she was arrested for the immigration violations described above when she attempted to return in March 1996. He stated that after that she remained outside the United States for an additional year, during which time his mother cared for the children. He stated that was a difficult year, but the only detail he offered pertinent to that difficulty is that he was obliged to support his wife in Mexico. He stated that if his wife and children were obliged to go to Mexico, it would be a disastrous change. He stated that his children would suffer because they are unfamiliar with Mexico, and they would not have the educational resources that they require. He stated that he would suffer from seeing his wife and children suffer.

The applicant's husband stated that if, on the other hand, the applicant were forced to leave the United States and the children stayed in the United States, apart from the emotional pain at seeing them separated from their mother, he would suffer financially and might be forced to sell his house and give up his business, as he would be obliged to care for his children more and would have less income. The applicant's husband provided no evidence, however, of the amount of time that would be required to care for his children, and no evidence that the applicant's absence of more than a year caused him extreme hardship. The applicant's husband provided a pay stub showing that his mother, who cared for the children during the applicant's absence, is now working, but did not discuss the possibility of her caring for the children. He also did not discuss whether other family members or professional daycare providers could perform that task.

The applicant's husband stated that his son [REDACTED] has an eye condition that increases his risk of developing glaucoma and requires annual monitoring. He indicated that he would be unable to

afford health care for that condition and for children.

cardiac care without his wife's help with the

As to the speech impediment of his son [REDACTED] the applicant's husband stated, "[E]ven though [REDACTED] speaks English he is much more comfortable in Spanish." This office notes that [REDACTED], who taught [REDACTED] for three years and is his godmother, reported, on January 14, 2002, that English is the dominant language of all of the applicant's children, and that they would therefore be handicapped attending school in Mexico. [REDACTED], the speech therapist, stated in his January 14, 2004 letter, that "[REDACTED] dominant expressive language is English – not Spanish," but in his November 7, 2003 report stated that [REDACTED] "primary – and still dominant – language is Spanish." In his letter of February 4, 2004, however, the applicant's husband, who is also in a position to know, stated that [REDACTED] is more comfortable in English.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record contains various documents produced by the school system the applicant's children attend. Those documents pertain to the special attention accorded [REDACTED] and [REDACTED] to combat their speech and learning disabilities.

The record contains news articles and printouts of web content pertinent to Mexico, particularly the prevalence of kidnapping there. Counsel provided no evidence or argument to show that the applicant's wife or children would be likely targets if they moved to Mexico.

On appeal, counsel reiterated the claims in the evidence submitted and stated that denial of the waiver application would cause extreme hardship to the applicant's husband. Counsel stated, "Without [the applicant's] presence, [her husband] would not be able to find comparable or even suitable childcare for all of his children . . ." but did not provide any evidence in support of that assertion.

Counsel asserted that, if the applicant is required to leave the United States, her husband would suffer extreme financial hardship because he would be obliged to support two households. Hardship of this type is a typical consequence of removal, and the applicant has not submitted evidence to demonstrate the extent to which supporting her in Mexico would place a financial burden on her spouse, or that such a burden would rise to the level of extreme hardship when combined with other hardship factors.

Further, the applicant did not demonstrate that she would be unable to find employment in Mexico and be self-supporting. Further still, the record shows that the applicant had family members in Mexico as recently as 1997. Counsel did not address the possibility that the applicant might be able to live with family members, thus reducing her expenses.

Counsel further stated that, if the applicant is unable to live in the United States, then her husband will be obliged to work fewer hours in order to care for his children and advocate for their health and education needs, and will be unable, therefore, to pay his portion of the mortgage he shares with his father and brother. Counsel did not provide any evidence from which the AAO can determine how many hours per week the applicant's husband would be obliged to care for the children, and that it would be incompatible with his current work schedule. Counsel did not indicate what the applicant's husband's share of the family mortgage is, or provide any support for the assertion that he would be able to pay that amount with his reduced schedule.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. The record contains no evidence that would permit the AAO to conclude that counsel's assertions are correct.

In asserting that the applicant's absence now would work more hardship than it did during her previous absence, counsel noted that the applicant now has five children, rather than three, and that if she went to Mexico, she would likely leave four of her children behind, rather than two, as she appears to have done during 1996 and 1997. He further stated that the special educational and medical needs of [REDACTED], and the severity of [REDACTED] speech impediment only became known after the applicant's return from Mexico in 1997.<sup>1</sup> He stated that the applicant's husband, therefore, would be obliged to reduce his work schedule in order to meet with teachers and doctors to ensure his children's health and continued progress with speech and learning difficulties.

The record does not demonstrate that the applicant's children's medical needs are very time-consuming. The January 27, 2004 letter from [REDACTED] indicates that [REDACTED] had been examined for his heart defect three times during the previous five years. It stated that he was then scheduled to be seen again in three years. The applicant's husband stated that [REDACTED] eye condition requires annual monitoring. Those medical appointments do not contribute much weight to counsel's argument that the applicant's absence would occasion extreme hardship to her husband.

Again, counsel has not provided any evidence from which this office can determine how many hours per week the applicant's husband would be obliged to meet with his children's teachers if the applicant were not in the United States. Again, this office cannot find that this additional responsibility would force the applicant's husband to reduce his work schedule, or otherwise cause him hardship, without any such evidence.

In the brief, counsel stated,

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<sup>1</sup> Although the January 27, 2004 letter from [REDACTED] indicates that [REDACTED] heart defect is congenital, the AAO notes that his birth certificate is in the record and indicates that he was born on May 14, 1992. That his heart defect was not discovered until after the applicant's return from Mexico in March 1997 is therefore credible.

The District Director wrongly concludes that it is [REDACTED] mother's responsibility to care for the children because she did so before and that [REDACTED] needs to provide evidence to the contrary. *Decision* at 4. Because this is a personal family decision, [REDACTED] is not required to show that his mother is unable to provide the main childcare function in the place of his wife so that he can avoid economic hardship.

Counsel misapprehends the burden of proof in this matter. The evidence shows that the applicant's mother-in-law previously cared for his children. The evidence suggests that she still lives in the same household as the applicant's husband and their children. It is the applicant's burden to demonstrate the circumstances that will result from her removal, and that these circumstances will cause her spouse extreme hardship. The AAO acknowledges that the absence of the applicant will result in some hardship to the applicant's spouse if the children remain, as the applicant is presently the primary caregiver for their children. However, it is incumbent on the applicant to demonstrate the severity of this hardship, and evidence in the record suggests that this hardship will likely be ameliorated by assistance from family members such as the applicant's mother-in-law, who had rendered assistance in the past.

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 spouse faces extreme hardship if the applicant is refused admission. Rather, the record suggests 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.

The record suggests that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d

390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver of her ineligibility pursuant to section 212(a)(6)(C)(i) of the Act is therefore unavailable. Because the applicant has been found statutorily ineligible for waiver of her ineligibility pursuant to both 212(a)(6)(C)(i) of the Act and section 212(a)(9)(C)(i) of the Act, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.