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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SALT LAKE CITY Date: JUL 01 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Salt Lake City, Utah, 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 under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission or other benefit provided under the Act by fraud or willful misrepresentation. He 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 his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated September 28, 2005.

On appeal, counsel for the applicant contends that the applicant has established that his wife and children will endure extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated October 11, 2005.

The record contains briefs from counsel; reports on conditions in Mexico; statements from the applicant, the applicant's wife, and the applicant's sister-in-law; documentation regarding the applicant's and his wife's employment in the United States; copies of birth records for the applicant and the applicant's children; medical documentation in connection with the premature birth of the applicant's son; documentation relating to the applicant's family's income, taxes, and expenses; a copy of the applicant's marriage certificate, and; a copy of the applicant's wife's naturalization certificate. The entire record was reviewed and considered in rendering the present decision on appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> Misrepresentation
>
> (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 Act is inadmissible.
>
> (ii) Falsely Claiming Citizenship. –
>
> (I) In general –
>
> > Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the

> United States for any purpose or benefit under this Act . . . is inadmissible.

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

> (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[.]

Applicants who made a false claim to U.S. citizenship prior to September 30, 1996 are eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

> In considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [USCIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by [redacted], Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 6, 1998 at 2-3.

The record shows that the applicant entered the United States without inspection on or about July 26, 1991. He departed on an unknown date and attempted to reenter on February 5, 1996 by presenting the birth certificate of a United States citizen and claiming to be that person. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant does not contest his inadmissibility on appeal, and he requires a waiver of his inadmissibility under section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in

the present case is hardship suffered by the applicant's wife. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

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).

On appeal, the applicant's wife states that she and her two children need the applicant in the United States. *Statement from the Applicant's Wife*, dated October 10, 2005. She explains that she works full time at a rate of approximately $2,400 per month, that the applicant earns approximately $2,800 per month. *Id.* at 1. She asserts that both incomes are required to meet their family's needs. *Id.* She lists her and the applicant's financial obligations, and she provides that they must pay approximately $4,215 per month in bills. *Id.* She states that, although her siblings and parents reside in Utah they are unable to assist her. *Id.* at 2.

The applicant's wife explains that she is a native of Nicaragua, and that she and her children would face difficulty adjusting to life in Mexico should they relocate there with the applicant. *Id.* She indicates that her family will be separated if the applicant must depart. *Id.* She notes that she has resided in the United States since age nine, and she has worked to help support her family since the age of 15. *Id.* She indicates that she has numerous relatives in the United States, including her parents, six siblings, and her siblings' children. *Id.* at 3. She explains that her family is close, and that her parents reside with her eldest brother and his family to save on costs. *Id.* She notes that she will have to reside with her family members due to economic difficulty if the applicant departs the United States. *Id.*

The applicant's wife states that she and the applicant do not wish to move their children away from their extended family. *Id.* She indicates that she would not have anyone in Mexico to help her care for her children while she and the applicant work. *Id.*

The applicant's wife asserts that her son has had medical problems including a blood infection that was treated for a week after his birth. *Id.* at 4. She states that her son has a growth on his back that may require surgery. *Id.* She provides that she will not be able to pay for her son's medical care in

the United States without the applicant's contribution, and that they would be unable to obtain quality care for their son in Mexico. *Id.*

The applicant's wife contends that her children wouldn't have adequate educational opportunities in Mexico, and their futures would be impacted. *Id.* at 5.

The applicant's wife states that she provides financial support for her grandmother in Nicaragua, and that she would be unable to continue should she lose the applicant's economic contribution or should she relocate to Mexico. *Id.* at 2.

The applicant states that he works hard to support his family in the United States, and that his wife and children will suffer greatly if he is compelled to depart. *Statement from the Applicant*, dated October 10, 2005. He provides that his wife grew up in the United States and she would have difficulty residing in Mexico, thus his family will be separated if the present waiver application is denied. *Id.* at 1.

The applicant's sister-in-law states that she is close with the applicant's wife and children, and that she will miss the applicant's wife and children if they relocate to Mexico. *Statement from the Applicant's Sister-in-law*, dated October 26, 2005. She provides that it will be difficult for the applicant's wife to adapt to life in Mexico. *Id.* at 1. She notes that the applicant's wife visits with her family in the United States every other weekend. *Id.*

Counsel contends that the applicant's wife and children will endure extreme hardship should the present waiver application be denied. *Brief from Counsel*, submitted on October 27, 2005. Counsel reiterates that the applicant's wife is Nicaraguan and she has resided in the United States since the age of nine. *Id.* at 4. Counsel provides that the applicant's wife does not have family or cultural ties to Mexico. *Id.* Counsel indicates that the applicant's wife lives approximately two hours away from her family members in Salt Lake City, Utah and that she is very close with them. *Id.* Counsel states that the expenses of travel between Mexico and the United States would limit the applicant's wife's ability to see her family should she relocate to Mexico. *Id.* at 5. Counsel asserts that the applicant's wife would face harsh conditions in Mexico, including high rates of poverty, unemployment, and crime. *Id.*

Counsel notes that the applicant and his wife work as blackjack dealers in a casino, and that they would be unable to find comparable positions in Mexico which would create financial hardship. *Id.* at 6.

Counsel provides that the applicant and his wife are involved with their community in the United States through religious and volunteer activities. *Id.*

Counsel states that the applicant's daughter attends preschool in the United States, but that they would be unable to afford such a school in Mexico. *Id.* at 6-7. Counsel asserts that the applicant and his wife would have difficulty securing childcare in Mexico, and that the applicant's wife would have to work to help meet the family's needs. *Id.* at 7. Counsel contends that the applicant's wife

would worry about her children's safety and the family's ability to provide then with basic necessities such as food and school supplies. *Id.* Counsel provides that the applicant's son was born with a blood infection and that the applicant and his wife would be unable to provide their son with comparable medical care in Mexico. *Id.* at 7-8.

Upon review, the applicant has established that his wife will experience extreme hardship should she relocate to Mexico. The applicant's wife is a native of Nicaragua, and the record does not show that she has any ties to Mexico beyond her marriage to a Mexican national. Conversely, she has resided in the United States since the age of nine years, she is a citizen of the United States, and she is culturally an American. All of her immediate family members reside nearby, including her parents and numerous siblings, and the record supports that she is close with them. Thus, unwillingly relocating to Mexico would create significant emotional challenges for the applicant's wife due to becoming separated from her family, community, and culture.

Relocating to Mexico would create financial hardship for the applicant's wife. She and the applicant presently have steady employment in the United States as card dealers in a casino. The AAO takes notice that economic and employment conditions are generally less favorable in Mexico than they are in the United States, and that the applicant and his wife would face challenges securing new employment that is comparable to their present occupations and compensation. *United States Central Intelligence Agency World Factbook: Mexico*, updated April 21, 2010 (estimating that in 2009 unemployment in Mexico was 5.6 percent, underemployment was as high as 25 percent, and in 2008 more than 47 percent of the population lived under the asset-based poverty line). Thus, the record supports that the applicant's wife would suffer economic hardship and related emotional difficulty.

The AAO takes notice that the United States Department of State issued a Travel Warning for Mexico, warning that crime and violence has escalated throughout the country in all cities and that U.S. citizens should take precautions and remain in well-known tourist areas. *United States Department of State Travel Warning: Mexico*, dated March 14, 2010. The applicant's wife faces a risk of crime or violence in Mexico, and it is evident that she would endure additional psychological hardship due to concern for the safety of herself, her children, and the applicant.

The record contains references to hardships that will be experienced by the applicant's children. Direct hardship to an applicant's children is not a basis for a waiver under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO acknowledges that the applicant's wife will endure emotional hardship due to her children's challenges in Mexico, including the loss of their medical insurance in the United States and reduced access to medical services in Mexico, separation from their extended family in the United States, the inability to continue their education in the United States, a lack of economic resources to provide for their needs, and the exposure to risks of residence in Mexico including crime. The applicant's wife would face considerable emotional hardship due to her children's difficulties.

The AAO has considered all elements of hardship to the applicant's wife, should she relocate to Mexico, in aggregate. Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will suffer extreme hardship should she join him abroad.

However, the applicant has not shown that his wife will endure extreme hardship should she remain in the United States without him. The record supports that the applicant's wife will endure economic challenges should she attempt to meet her and her children's needs without the applicant's contribution. The applicant provides a letter from his wife's employer that reflects that she works full-time at a rate of $5.15 per hour and approximately $487 per week in tips. *Letter from the Applicant's Wife's Employer*, dated October 25, 2005. Accordingly, based on a 40-hour work week and a 52-week year, the applicant's wife earns an approximate gross income of $36,000 per year, or $3,000 gross income per month. Yet, the applicant's wife reported that her household has financial obligations totaling $4,215 each month.

The applicant has not provided documentation to support all of the expenses his wife claimed, such as $500 per month for a Bank of America credit card and $110 per month for a Key Bank personal loan. The AAO acknowledges that the financial needs for a household with an adult and two children are considerable, and that the applicant has submitted evidence to support many of the claimed expenses including a home mortgage. It is evident that family separation will create pressures for additional expenditures relating to communications and travel between the United States and Mexico. Yet, the applicant has not shown by a preponderance of the evidence that his wife would be unable to support herself and her children, or that she would face economic circumstances that rise to an extreme level.

The applicant's wife states that she provides financial support for her grandmother in Nicaragua, and that she would be unable to continue without the applicant's economic contribution to their household. However, the applicant has not submitted any documentation to show that his wife assists her grandmother financially. Nor has the applicant established that his wife's grandmother lacks adequate resources to meet her needs. Thus, the applicant has not shown that his wife will endure additional hardship due to a lack of ability to contribute funds to her grandmother.

The applicant's wife asserts that her son's health status requires monitoring due to the fact that he was born with a blood infection. However, while the applicant submits medical documentation relating to his son's birth and associated complications, he has not provided any medical records to support that his son continues to experience health problems. The applicant has not shown that his son will lack access to any needed health care should he and the applicant's wife remain in the United States that might otherwise create emotional hardship for the applicant's wife.

The applicant's wife would endure significant emotional hardship should she become separated from the applicant. The applicant and his wife have been married for approximately 10 years, and the record supports that they have a close family. The AAO acknowledges that the separation of spouses often results in substantial psychological difficulty. In the present matter, the applicant is inadmissible under section 212(a)(6)(C) of the Act, a permanent ground of inadmissibility, which may only be remedied by a waiver under section 212(i) of the Act. Thus, if the present waiver

application is denied, the applicant will have no means to a legal status in the United States and his wife may only achieve unity with him by relocating to Mexico or a third country. The AAO gives due consideration to the emotional consequences such circumstances would have for the applicant's wife should she remain separated from the applicant in the United States. However, family separation is a common result of inadmissibility. The AAO must examine the totality of the hardships to the applicant's wife to determine if they present greater difficulty than ordinarily expected upon family separation. The applicant has not distinguished his wife's emotional hardship from that which often results when spouses reside apart due to a prior violation of U.S. immigration law.

Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

It is evident that the applicant's wife's emotional challenges would be compounded by the emotional hardship her children would experience should they become separated from their father for an indefinite period. The applicant's wife would further face psychological difficulty due to concern for the applicant's well-being in Mexico. However, the applicant has not provided reports to show that his home state of Puebla poses unusual risks such that his presence there will cause unusual emotional difficulty for his wife.

The AAO has considered all elements of hardship to the applicant's wife, should she remain in the United States without the applicant, in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will endure extreme hardship should he depart the United States and she remain.

An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As noted above, the applicant established that his wife would suffer extreme hardship should she relocate to Mexico. However, as he has not shown that his wife would experience extreme hardship in the United States, he has not shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a 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.