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[REDACTED]

FILE: [REDACTED]

Office: MIAMI, FL

Date: JUL 07 2005

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Nicaragua 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 having procured a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. Citizen and 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 spouse who petitioned for him in this case.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 29, 2004.

On appeal, counsel asserts that the district director did not apply the correct legal standard, failed to consider the favorable factors in the case and made an erroneous conclusion not supported by the record. *See Brief in Support of Appeal*, dated May 17, 2004.

In support of these assertions, counsel submits a brief, dated May 17, 2004. The record also contains numerous documents including, but not limited to, an affidavit and statement from the applicant's spouse, psychologist reports for the applicant's spouse and her daughter, Department of State reports on Nicaragua and employer letters for the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant made a material misrepresentation to the United States Government regarding a visitor visa application in 1997. Specifically, the applicant failed to disclose a previous arrest and conviction. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act .

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.

Counsel first asserts that the district director did not apply the correct legal standard in denying the waiver application. *Brief in Support of Appeal*. at 4. Counsel is correct in stating that the precedent case used to determine extreme hardship is *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* will be appropriate for this decision.

Counsel also asserts that the district director failed to consider the favorable factors in the case, including the qualifying relative's family ties in the United States and Nicaragua and country conditions in Nicaragua, and that he erroneously concluded that there was not substantial evidence of emotional and economic hardship to the applicant's spouse. *Brief in Support of Appeal*. at 6-11. The AAO notes that the weighing of discretionary factors need only be done upon a finding of extreme hardship.

Therefore, based on the facts of this case, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate. *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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to the United State; 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 record reflects that the applicant's spouse has lawful permanent resident or United States citizen family ties to the United States including her five brothers and sisters, son, daughter and mother. Her father lives in Nicaragua, however, she has not spoken to him for the past five years and he has abandoned her family. Counsel contends that she will be physically and psychologically isolated from any meaningful contacts. *Id.* at 8. The record includes information on the country conditions in Nicaragua, specifically that it is politically unstable, socially unstable, economically depressed, discriminatory towards women and fails to respect human rights.

In regard to the financial impact of departure from the United States, counsel asserts that the applicant and his wife will have financial difficulties as they will be starting a new life without any financial or social support and that it is unlikely that the applicant's spouse will find any employment. *See Id.* at 10-11. However, the 2003 Department of State Country Reports on Human Rights Practices submitted by counsel states that more than 92 percent of women capable of employment have some type of job. *See 2003 Department of State Country Reports on Human Rights Practices*, dated February 25, 2004 at 13. Also, there is no evidence that the applicant cannot find employment nor is there evidence that they will be starting a new life without any financial support. For instance, there is no evidence that they do not have savings or other investments to cover periods where they are locating employment in Nicaragua.

Counsel also states that the annual income for the applicant and his spouse would be reduced from \$69,000 per year to about \$1,000 per year. *Id.* at 16. Counsel's arguments are based on speculation and generalized country reports. Counsel does not explain how he arrived at the figure of \$1,000 per year, rather he includes a footnote to check the submitted country report without referring to a specific page or piece of data in the country reports. It appears that counsel is relying on statements from the 2003 Department of State Country

Reports on Human Rights Practices that list minimum wages for different occupations. *See 2003 Department of State Country Reports on Human Rights Practices*, at 19. Depending on what occupation the applicant and his spouse would engage in, they could make much more than the amount counsel listed. In fact, the same country report states that the majority of workers earn well above the statutory minimum rates. *Id.* Counsel has not presented any other evidence that the applicant's spouse could not find employment or that the applicant could not support her.

Lastly, counsel states that the psychological report indicates that the applicant's spouse is very depressed with sleep disturbance and weight loss. *Id.* at 12. Counsel states that the documents provided clearly establish that the applicant is suffering from depression and/or stress-related illness. *Id.* However, the psychologist's report does not mention that the applicant's spouse is suffering from depression nor is there any indication that the applicant's spouse is receiving medical treatment or medication for any health problems. Therefore, counsel's statement regarding the applicant's depression and/or stress related illness is not substantiated. Counsel also contends that the country reports provide that the applicant's spouse will not be able to receive suitable medical treatment or care if she relocates to Nicaragua. *Id.* However, counsel does not mention where the applicant's spouse would relocate to in Nicaragua. The 2003 Department of State Country Reports on Human Rights Practices submitted by counsel mentions several Atlantic Coast towns that provide government health care. *2003 Department of State Country Reports on Human Rights Practices*, at 15. Therefore, the AAO finds counsel's contention on this point to be unpersuasive.

The AAO recognizes that the applicant's spouse will experience difficulties if she lives in Nicaragua. However, the applicant's spouse does not establish extreme hardship to herself if she remains in the United States maintaining her current employment. Counsel states that the applicant's spouse is making between \$25,000 and \$35,000 per year. *Brief in Support of Appeal*, at 15. Counsel also submits an employment letter from the qualifying relative's employer, but there is no wage listed in this letter to verify this statement. Therefore, the applicant's spouse's income is unknown, but regardless, the amount proffered is well above the federal poverty guidelines for her family size. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Therefore, the applicant's spouse will face the common problems associated with separation from a spouse if she remains in the United States.

U.S. court decisions have repeatedly 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.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result

of separation from the applicant and is sympathetic to her situation. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 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.