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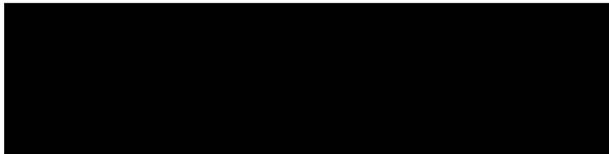
U.S. Department of Homeland Security  
20 Mass, Rm. 3000,  
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U.S. Citizenship  
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FILE:



Office: PANAMA CITY

Date: ~~01~~ 12 2006

IN RE:



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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Panama City, Panama, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). 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 Colombia who was found 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). The applicant is the spouse of a U.S. citizen. She 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 spouse.

The acting officer in charge denied the application for waiver, finding that the applicant failed to establish that a qualifying family member would suffer extreme hardship. *Decision of Acting Officer in Charge*, dated February 28, 2005.

The record reflects that, on December 15, 2003, the applicant applied for admission at the Miami, Florida, Port of Entry. The applicant presented her Colombian passport containing a U.S. nonimmigrant visa, on which she had previously traveled to the United States, and a counterfeit backdated reentry stamp into Colombia. The applicant was placed into secondary inspections where she admitted that she had obtained the counterfeit stamp to conceal the fact that on a previous visit to the United States she had overstayed her valid nonimmigrant status by nine months. The inspections officer found the applicant to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(II) of the Act, 8 U.S.C. §§ 1182 (a)(6)(C)(i) and 1182(a)(7)(A)(i)(II), for having attempted to procure admission into the United States by fraud and being an immigrant without valid entry documents. The applicant was permitted to withdraw her application for admission and was allowed to return voluntarily to Colombia. On June 25, 2004, the applicant married her naturalized U.S. citizen husband, [REDACTED]. On August 20, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant.

On November 24, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant's spouse asserts that it is difficult for him to see his wife due to his job and he misses her. *See Applicant's Brief*, dated February 28, 2005. To support his assertions, the applicant submitted the above-referenced brief, a copy of his military identification card and a copy of his military orders. The entire record was reviewed in rendering a decision in this case.

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

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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 acting officer in charge based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a counterfeit backdated Colombian entry stamp in order to attempt to procure admission into the United States in 2003. The applicant does not contest the acting officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen step-daughter will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an 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 reflects that [REDACTED] is a native of Peru who became a conditional resident in 1998 and a naturalized U.S. citizen in 2003. The applicant and [REDACTED] do not have any children. [REDACTED] has a daughter from a previous relationship, who is a U.S. citizen by birth. The record reflects further that the applicant is in her 20's, [REDACTED] is in his 30's and there is no evidence that [REDACTED] has any health concerns.

[REDACTED] asserts he would suffer extreme hardship if the applicant were denied admission to the United States because he loves his wife and misses her, which is exacerbated by his employment as a Special Action Clerk in the U.S. military, stationed at Fort Bragg, North Carolina. [REDACTED] in his brief, states that he has been on call, awaiting orders, since December 2004 due to the Iraq war and that it is difficult for him to travel to see his wife in Colombia because he cannot travel outside a 100-mile radius of Fort Bragg, North Carolina. He also states that, as a member of the military, separation from his wife is complicated by his tour of duty and associated job duties. [REDACTED] notes that it is even difficult for him to visit his daughter because she resides in Miami, Florida, more than 700 miles from Fort Bragg, North Carolina. [REDACTED] in the affidavit accompanying the Form I-601, stated that he would be deployed to Iraq in December 2004 and that he wanted his wife to take charge of his personal matters in the United States before he was deployed.

There is no evidence in the record to suggest that [REDACTED] is unable to earn sufficient income to support himself and his daughter. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, there is evidence in the record to indicate that [REDACTED] daughter's biological mother is the main physical and financial supporter of [REDACTED] daughter.

While there is evidence in the record indicating that [REDACTED] is stationed at Fort Bragg, North Carolina, there is no evidence in the record to suggest that deployment to Iraq is imminent or that there are no other family members in the United States who could take charge of [REDACTED] affairs in the absence of the applicant. The AAO notes the applicant and [REDACTED] have never resided together in the United States as husband and wife and that [REDACTED] has been enlisted with the military since the year 2000. There is no evidence in the record, besides [REDACTED] brief, to suggest that [REDACTED] travel is restricted to within 100 miles of his duty station or that he would be unable to obtain an exception in order to visit his wife in Colombia. There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

[REDACTED] does not contend that he would suffer hardship if he were to return to Colombia with the applicant. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should he return with the applicant to Colombia. Additionally, 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 and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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. 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 section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under 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.