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U.S. Citizenship
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FILE: [Redacted] Office: NEWARK, NJ Date: FEB 13 2007

IN RE: Applicant: [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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Columbia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her naturalized citizen husband and lawful permanent resident children.

The District Director concluded that the applicant 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 May 27, 2005.

On appeal, counsel asserts that the applicant's husband and children will suffer extreme hardship if the applicant's waiver of inadmissibility is denied. Counsel states that *Matter of Lopez-Monzon*, 17 I&N Dec. 280, (Comm. 1979) indicates that the purpose of the section 212(i) waiver is to provide for the unification of families. Counsel cites *Delmundo vs. INS*, 43 F.3rd 436, 442-43 (9th Cir. 1994) to show that failure to weigh all family factors is reversible error. Counsel asserts that the factors to analyze in determining whether there is extreme hardship are set forth in *Matter of Cervantes*, 22 I&N Dec. 560, 566 (BIA 1999). Counsel contends that the U.S. Supreme Court has held that it is rational and therefore lawful to distinguish aliens who engage in a pattern of immigration fraud from aliens who commit a single, isolated act of misrepresentation, and he cites to *INS vs. Yueh-Shaio Yang*, 117 S. Ct. 350, 354 (1996). Counsel states that although the applicant's fraudulent entry cannot be disregarded in the waiver determination, it may be an abuse of discretion to irrationally depart from the past policy of disregarding the initial fraud. *Id.* at 353. Counsel maintains that the applicant's husband knows that his wife would be sent back to a country where she was abused by her common-law husband. According to counsel, the prior marriage of the applicant's husband ended because of his wife's infidelity, which caused him to become depressed and turn to alcohol. Counsel states that the only serious family tie that the applicant's husband has to the United States is the applicant and that he depends on her to manage the household. Counsel asserts that the evidence in the record supports the applicant's contention that the hardship endured by her husband would be far greater than the suffering that is incidental to separation that results from deportation.

The record contains the brief from counsel; a letter, dated April 20, 2005, from the applicant; a letter, dated April 20, 2005, from the applicant's husband; copies of permanent resident cards of the applicant's children; letters from counsel to the district director; a document signed by [REDACTED] dated April 8, 2005 and a translation of the document; a letter signed by [REDACTED], M.D.; the Form I-601; the Form I-130 and supporting documentation; the Notice of Intent to Deny (NOID) from the District Director, dated April 11, 2005; and the decision of the district director, dated May 27, 2005. The entire record was reviewed and considered in rendering this decision.

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 record reflects that on or about July 1, 2001, the applicant entered the United States using a fraudulent passport and nonimmigrant visa. *NOID*, dated April 11, 2005. The applicant therefore entered the United States by making a willful misrepresentation of a material fact so as to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under 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 seeks a waiver of inadmissibility. A section 212(i) waiver of the bar to admission resulting from violation of 8 U.S.C. § 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 to the applicant or to her children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative in the application. The qualifying relative in the present case is the applicant's husband. 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 AAO agrees with counsel in that *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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 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). (Citations omitted).

Counsel states that *Matter of* [REDACTED] indicates that the purpose of the section 212(i) waiver is to provide for the unification of families. The AAO agrees that in *Matter of* [REDACTED], a case decided in 1979, the BIA indicated that: "The intent of Congress in adding that provision was to provide for the unification of families and avoid the hardship of separation." Furthermore, U. S. courts have stated, "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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in evaluating the hardship factors in the present case.

On appeal, counsel states that although the applicant's fraudulent entry cannot be disregarded in the waiver determination, it may be an abuse of discretion to irrationally depart from the past Immigration and Naturalization Service (INS) policy of disregarding the initial fraud. *Yueh-Shaio Yang* at 353, 354.

The AAO finds counsel's assertion unpersuasive. In [REDACTED], the U.S. Supreme Court analyzed the meaning of the language of section 1251(a)(1)(H) so as to determine the factors that the Attorney General may consider with regard to a waiver. *Id.* at 352, 353.¹ Section 1251(a)(1)(H) reads as follows:

"The provisions of this paragraph relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens described in section 1182(a)(6)(C)(i) of this title [who have obtained a visa, documentation, entry or INA benefit by fraud or misrepresentation] ... may, in the discretion of the Attorney General, be waived for any alien ... who-

"(i) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

"(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title [relating to possession of valid labor certifications, immigrant visas and entry documents] which were a direct result of that fraud or misrepresentation." ^{FN2}

It is noted that the U.S. Supreme Court in *Yueh-Shaio* acknowledged that the INS had made "frequent concessions in litigation that the underlying fraud for which the alien is deportable "should not be considered as an adverse factor in the balancing equation." *Id.* at 353. The AAO notes, however, that the statute at issue in [REDACTED] differs from the statute in the present case. Section 212(i) of the Act, the waiver statute in the present case, requires the Attorney General to analyze extreme hardship to the citizen or lawfully resident spouse or parent of the alien in the waiver determination. This is not a requirement under section 1251(a)(1)(H). In addition, 8 U.S.C. § 1251(a)(1)(H) relates to aliens who were admitted to the

¹ 8 U.S.C. § 1251(a)(1)(H) was transferred to 8 U.S.C. § 1227. It is now found at section 237(a)(1)(H) of the Act.

United States in possession of a valid immigrant visa and are deportable. That is not the case here. Thus, any INS general policy or practice with regard to a waiver determination as it relates to section 1251(a)(1)(H) is not relevant under section 212(i) of the Act, the statute under consideration in the present case.²

Counsel asserts that the applicant's husband will suffer extreme emotional hardship if the applicant is deported. The applicant's husband states that the applicant "makes my life worth living" and that "without her there is no reason to live." *Letter from applicant's husband*, dated April 20, 2005, at 2 and 3. He stated that the applicant and her four children lived with the applicant's common-law husband who had a drug addiction and was abusive. *Id.* at 3. The applicant's husband states that the applicant's common-law husband:

[S]till lives there and knowing the abusive conditions she will be living in scares me. I don't know what he is capable of doing once she is there. He has previously caused her much harm and knowing that she got married will only give him more reasons to abuse and neglect her.

The applicant's husband indicates that he has both a full-time and a part-time job and that he will not be able to support the applicant in Columbia. *Id.* at 3. The applicant's husband states that the applicant's United States income supports her family in Columbia, and that her children have approved lawful permanent resident applications. *Id.* at 3.

The applicant indicates that she has endured verbal and physical abuse in a former relationship. *Letter from applicant*, dated April 20, 2005, at 1. She states that she and her common-law husband, the father of her four children, sought help through family counseling. *Id.* at 1. She states that her mouth was burned with an acid liquid by her common-law husband. *Id.* at 1. She states that her right arm was cut with a knife by him and that he threatened her while she lived with an aunt. *Id.* at 2. The applicant states that her 8 year old daughter and 17 year old twin needed psychological help after seeing the abuse. *Id.* at 3.

To support the claim of abuse, the applicant submitted into the record a document that is dated April 8, 2005, and signed by [REDACTED], Fiscal 20 Seccional, entitled [REDACTED]. The translation of the document into the English language is, for the most part, not coherent. The document states:

The it subscribed Public Prosecutor Twenty Sectional of the Second Unit of Crimes Against the [P]atrimony and [O]thers of [REDACTED]

Causes is evident:

That in this office itself ahead investigation penal situated under the number 354.282, by the punishable of threats of death, physical abuse and moral, where is a complainant and offended the senora [the applicant] . . . and its children . . . and where the denunciation is . . . who constant and continued since the year of 1996, it comes tortured physically to his wife and children, for which these requested to this office, was sent to them for protection. The mister said it has not been possible to locate him to this date in effect for the sworn statement.

² It is worth noting that in [REDACTED] the U.S. Supreme Court indicates that the INS disclaimed a settled policy to disregard entry fraud or misrepresentation. *Id.* at 353.

In the same matter, revised the system of this office, this mister figure him other accusations since the year of 1996 and subsequent, under them . . .

It expedite in the presence to the interested party and for personal effects.

Although the submitted document is relevant, the AAO cannot determine the document's true value given that its content lacks coherency; as such, little weight can be attributed to this evidence. It is noted that the applicant indicates that she and her common-law husband attended family counseling sessions; however, she submitted no documentary evidence of this. Furthermore, although the statements of the applicant regarding her physical abuse are relevant and are taken into consideration, little weight can be afforded them in the absence of supporting evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

On appeal, counsel asserts that the applicant has no strong family ties to the United States other than the applicant. However, the applicants' husband states that he has "many relatives in the United States along with my children." *Letter from applicant's husband*, dated April 20, 2005, at 2. He does not indicate in the letter that he has no strong family ties to the United States other than the applicant. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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. *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.

The applicant's husband indicates that he has both a full-time and a part-time job and that he will not be able to support the applicant in Columbia. The AAO acknowledges that the applicant and her spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse will be unable to support the applicant if she departs from the United States. The record contains no documentary evidence of the earnings of the applicant's husband or of monthly household expenses so as to show financial hardship. Moreover, 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 applicant submits no documentary evidence to show that her husband would experience extreme hardship if he were to join her in Columbia.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.