

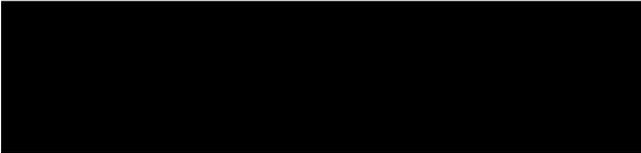
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**U.S. Citizenship
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FILE:  Office: LOS ANGELES, CA Date: JUN 05 2007

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:



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 District Director, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of El Salvador 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 willfully misrepresenting a material fact (her true identity) in order to gain entry into the United States. The applicant is the wife of a naturalized citizen, [REDACTED]. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship to her qualifying relative, her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated December 28, 2004. On appeal, counsel submits a brief and previously submitted and additional evidence.

The AAO will first address the finding of inadmissibility 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).

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 chapter is inadmissible.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 the applicant committed fraud by entering the United States on May 26, 1995, using another person's passport. *Form I-110*. She is therefore inadmissible, as found by the district director, under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted here.

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 to the applicant and her child 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. The qualifying relative here 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to [REDACTED]. It is noted that extreme hardship to the applicant's husband must be established in the event that he joins the applicant to live in El Salvador; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel makes the following statements. [REDACTED] was raised in the United States and all of his family members are U.S. citizens who live here. English is [REDACTED] primary language; he speaks very little Spanish. He would be isolated in El Salvador and would not be able to adapt there, which would contribute to a decline in his health due to a stress syndrome. Treatment for the stress syndrome, which affects [REDACTED] work and studies, would not be available in El Salvador. [REDACTED] will not be able to find work in El Salvador as a school bus driver, his occupation in the United States. He has a poor work history in the United States and he has no contacts and legal status in El Salvador; he will not be able to provide for his family in El Salvador.

The [REDACTED] ten-year-old daughter (born September 8, 1995) had heart surgery in 1996 when she was one year old, and remains under a doctor's supervision. Their daughter has, in addition to the heart condition, other health problems. If she lived in El Salvador, she would not have access to and would not be able to afford adequate medical treatment for her heart condition or any other medical problems. [REDACTED] worries about this. Their daughter presently has medical insurance through [REDACTED]'s job. Their daughter would not have the same level of education in El Salvador that she has in the United States. The [REDACTED] could not afford school for their daughter there. [REDACTED] is not sure that he can care for his daughter without his wife. They do not earn enough money for daycare or assistance and there is no one else to help care for their daughter. [REDACTED] suffered a severe anxiety tension reaction after receiving notice that the waiver application was denied.

The evidence in the record indicates that [REDACTED] has been treated for severe emergency stress syndrome and essential hypertension. *Letter from [REDACTED] dated January 31, 2005.* The [REDACTED] daughter has congenital heart disease, large patent ductus arteriosus. She was scheduled for surgical ligation of her patent ductus arteriosus. *Cardiothoracic Critical Care Progress Note, Children's Hospital Los Angeles, Cardiothoracic Surgery Program, dated September 30, 1996.* The division and ligation of patent ductus arteriosus was performed on November 27, 1996. *Operative Record, Children's Hospital Los Angeles, Cardiothoracic Surgery Program.* The [REDACTED] daughter has been a patient with La Vida since November 7, 1996. She had a medical history of congenital heart disease for which she underwent open chest surgery. Her other medical history includes allergic rhinitis, sinusitis (an infection or inflammation of the mucous membranes that line the inside of the nose and sinuses), otitis media (an inflammation of the middle ear segment of the ear), tinea unguum (fungal infection of the nails) and psoriasis (an immune-mediated disease which affects the skin and joints). *Letter from [REDACTED] MD, FAAP, La Vida Multi-Specialty Medical Centers, dated February 4, 2005.*

[REDACTED] is employed as a school bus driver, earning \$11.75 per hour. *Letter from the operation manager with Tumbleweed Transportation, dated September 9, 2003.* He is also employed as a janitor, earning \$425 monthly. *Letter from [REDACTED] dated September 9, 2003.* Mr. Vigil's two pay stubs with Tumbleweed Transportation reflect gross bi-weekly earnings of \$1,054 and \$743. The applicant is employed, working 36 to over 40 hours each week as a customer service representative, earning \$7.25 per hour with Dollar Financial Group. *Letter from area manager, dated August 30, 2003.* Her bi-weekly net pay is \$422. In 2002, the Vigil family reported earnings of \$17,376. *Form 1040.* The applicant and her husband married on March 26, 1997. *County of Los Angeles, Registrar-Recorder/County Clerk, License and Certificate of Marriage.* [REDACTED] states that he and his daughter could not function without his wife and that his family would be destroyed without her. *Letter from [REDACTED] dated September 27, 2001.*

The entire record has been reviewed in rendering this decision.

[REDACTED] who is 29-years-old, is concerned about the well-being of his daughter if his wife, who he has been married to for 10 years, is deported. He states that he and his daughter could not function without her. The AAO notes that the applicant's financial contribution to the income of the [REDACTED] family is substantial. The evidence reveals that their daughter, now aged 11, has congenital heart disease, large patent ductus arteriosus, which required chest surgery when she was one year old, and that she has other health problems and has been a patient with a medical center since her chest operation.

In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) the Ninth Circuit stated that “The most important single [hardship] factor may be the separation of the alien from family living in the United States.” (internal quotations and citation omitted). Although the circuit court indicated that “while an alien “cannot gain a favored status by the birth of a citizen child,” *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986), “[t]he hardship to a citizen or permanent resident child may be sufficient to warrant suspension of the parent's deportation.” (citation omitted). It further stated that “[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.” (citation omitted). *See, e.g., Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (the most important single factor may be the separation of the alien from family living in the United States; separation from family alone may establish extreme hardship).

The AAO finds that the evidence reflects that the applicant’s leaving the country would render [REDACTED] financial difficulties more severe. Although hardship to the applicant’s child is not a consideration under section 212(i), the hardship endured by her husband, as a result of his concern about the well-being of his child, is a relevant consideration.

In *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981), the Ninth Circuit stated that economic loss alone does not establish extreme hardship, but it is still a fact to consider in determining eligibility for suspension of deportation. (citation omitted). The circuit court further stated that the BIA must consider personal and emotional hardships which result from deportation. (citation omitted). Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare. *Cf. Tukhowinich v. INS*, 64 F.3d 460 (9th Cir. 1995) (the loss of financially comparable employment would create not only an economic hardship for [REDACTED] but would severely frustrate what she regards as the overriding mission in her life-to provide for her parents and siblings).

Based on the evidence in the record, the stress that the applicant’s husband would endure in attempting to work and care for his daughter would, the AAO finds, rise to the level of extreme emotional and financial hardship.

The applicant must also establish that her husband would endure extreme hardship in the event that he joined her in El Salvador. The AAO finds that not enough evidence was produced to make out a claim of extreme hardship to the applicant’s husband if he joins her in El Salvador.

Counsel states that [REDACTED] was raised in the United States and all of his family members are U.S. citizens who live here. However, no evidence has been provided of their immigration status. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence.¹ Counsel states that English is [REDACTED] primary language; he speaks very little Spanish and that [REDACTED] would be isolated in El Salvador and would not be able to adapt there. The AAO finds that the record does not contain a statement of [REDACTED] in which he makes these assertions. The unsupported assertions of counsel do not constitute evidence. *See cases cited*

¹ *See, Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)

supra note 1. Counsel claims that treatment for the stress syndrome suffered by [REDACTED] is not available in El Salvador. However, the applicant submitted no evidence to support this claim. The unsupported assertions of counsel do not constitute evidence. *See* cases cited *supra* note 1. Counsel's claim that [REDACTED] will not be able to find work in El Salvador as a school bus driver is also not supported by evidentiary materials. The unsupported assertions of counsel do not constitute evidence. *See* cases cited *supra* note 1. The record reflects that [REDACTED] is able to provide health insurance for his family though his employment with Tumbleweed Transportation. Counsel's assertion that the applicant's daughter would not have access to and would not be able to afford adequate medical treatment for her heart condition or other medical problems and would not have the same level of education in El Salvador is not supported by independent evidence. The unsupported assertions of counsel do not constitute evidence. *See* cases cited *supra* note 1.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship in the event that [REDACTED] joins the applicant in El Salvador. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.