

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

112

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FLORIDA

Date: JUN 21 2007

IN RE:

[Redacted]

PETITION: 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 PETITIONER:

[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, Chief  
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, [REDACTED] is a native and citizen of Paraguay 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 engaging in willful fraud and misrepresentation of material fact in order to gain admission into the United States. The applicant is the wife of [REDACTED] a naturalized citizen of the United States, and the mother of a U.S. citizen child. 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, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director, dated January 23, 2006.*

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

On appeal, counsel states that the applicant has never "committed fraud upon immigration authorities of the United States" and that she has not "been charged with fraud and she fully cooperated with the Immigration Service." Counsel asserts that the applicant "correctly identified herself to the inspecting officer upon entry to the United States."

The record reflects that the applicant attempted entry into the United States by presenting to immigration officials a Form I-551, Resident Alien Card (Form I-551), bearing the name of another individual. The applicant was a passenger in a vehicle driven by a United States citizen. The applicant was subsequently paroled into the United States. *Record of Deportable Alien, Form I-213.*

A case that is relevant here is *Matter of D-L- & A-M-*, 20 I & N Dec. 409 (BIA 1991). In *Matter of D-L- & A-M*, the Board of Immigration Appeals (BIA) held that outside of the transit without visa context, an alien is

not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent Spanish passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to U.S. immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act: it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413.

With the instant case, so as to gain admission into the United States, the applicant presented a Form I-551 to immigration officials that misrepresented her true identity so as to gain admission into the country. The record does not convey that she, upon entry in the United States, surrendered the false document to U.S. immigration officials, and immediately revealed her true identity. Thus, the fact pattern of the applicant's misrepresentation is distinguishable from that in *Matter of D-L- & A-M-*.

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the Seventh Circuit Court of Appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that "[a]n individual who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact." *Id.* at n.1.

Accordingly, there is substantial evidence to support the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact. She knowingly presented to U.S. immigration officials a Form 551 bearing a false identity so as to gain admission into the United States. She therefore engaged in willful fraud and misrepresentation of a material fact.

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

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.

On appeal, counsel makes the following statements. The applicant's husband would suffer extreme hardship if she is returned to her native country because he would be deprived of her support and company. The applicant suffers from severe depression and panic attacks and has been referred to a psychiatrist for treatment. If she has to leave the country, her husband would be unable to provide her with adequate treatment, help, and support, which constitutes a hardship for him.

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 to his or her child is not a permissible consideration under the statute. Hardship to the applicant and her child will be considered here, but 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).

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, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an applicant 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.

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 the applicant's husband. Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; 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.

The record here contains a document, dated January 6, 2006 and signed by [REDACTED], which states that the applicant is taking medicine for anxiety and was recommended to see a psychiatrist. It also contains a prescription, dated January 6, 2005, of Paxil for the applicant; a marriage certificate; birth certificates; a U.S. Department of State profile report on Paraguay; wage statements; income tax records; employment verification letters; and other documents.

The applicant is 34 years old. She has been married for nearly six years to [REDACTED] who is 40 years old. The [REDACTED] have a son who was born in the United States on September 7, 2002. [REDACTED] has been

gainfully employed with [REDACTED], earning \$21,031 in 2004. *Form W-2 Wage and Tax Statement.* [REDACTED]  
[REDACTED] earned \$8,558 in 2004 while employed with [REDACTED] *Form W-2 Wage and Tax Statement.*

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).

However, the fact that the applicant has a U.S. citizen son is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee’s child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship)). The Ninth Circuit in *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.

The record does not establish that the applicant’s husband would endure economic hardship if he remains in the United States without his wife. [REDACTED] is employed full-time earning \$21,031 in 2004. No evidence has been produced to show that he requires the income of the applicant to meet monthly household expenses. In addition, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

[REDACTED] takes medicine for anxiety, and her doctor recommends that she seek the services of a psychiatrist. Counsel asserts that the applicant’s husband is concerned about taking care of his family. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one. The applicant’s husband will undoubtedly experience emotional hardship if separated from his wife of six years. However, the AAO finds that [REDACTED] 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. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship,

which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra.*

Counsel submits a U.S. Department of State profile of Paraguay to establish the applicant and her husband will endure economic hardship stemming from inability to find work in Paraguay. As stated in *Matter of Cervantes-Gonzalez, supra*, the conditions of the country where the alien and his or her family will be returning are relevant in determining hardship. However, economic hardship claims of not finding employment in the Philippines and not having proper medical care benefits were found not to reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). The submitted U.S. Department of State profile of Paraguay provides general information about Paraguay, but it does not provide information that is specific to the applicant's and her husband's situation.

In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra*. In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980), the Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." The U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra*.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8<sup>th</sup> Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57." The AAO finds that the submitted evidence fails to establish that the Trujillo's would be completely unable to find work in Paraguay. 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)).

The fact that economic and educational opportunities for the applicant's child are better in the United States than in the alien's homeland does not establish extreme hardship. *See, e.g., Matter of Piltch*, 21 I&N Dec. 627, 632 (BIA 1996), citing *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974) and *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Thus, the claim of reduced educational opportunities for the Trujillo's son is unpersuasive in establishing extreme hardship.

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. 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.