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JUN 21 2007

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, 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 Honduras 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 a naturalized citizen of the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director denied the waiver application, concluding that the applicant failed to establish that she would suffer extreme hardship if the waiver application were denied. *Decision of the Director, dated July 7, 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.

The record reflects that the applicant sought to gain admission into the United States by presenting to immigration officials a Form I-94 with a counterfeit Temporary I-551 stamp in the name of [REDACTED] [REDACTED] *Record of Sworn Statement, Form I-867A, page 2, dated March 4, 1999.*

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 presented to U.S. immigration officials counterfeit

documents so as to gain admission to the United States. She therefore engaged in willful fraud and misrepresentation of a material fact.

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

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154 (a)(1)(B) of this title, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

On appeal, the applicant states that marriage is very important to her and her husband. They are sick about the situation they are going through. If she is deported, her husband wants to reside in the United States for their future well-being. They have been married for five years, which is a long time, and she does not want to be separated from her husband. *Form I-290B*. She and her husband are very close; they have a strong and healthy relationship that will be destroyed if she leaves. They have a strong commitment and without her help her husband will not make it. It will devastate her if she and her husband are not together.

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 alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child. 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 here in determining extreme hardship to the applicant’s husband. Extreme hardship to the applicant’s husband must be established in the event that he remains in the United States; and in the alternative, that he joins the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. It is noted that hardship to an applicant is not a relevant consideration in the hardship analysis and will be considered only to the extent that it impacts the qualifying relative.

The record contains photographs, income tax records, wage statements, a marriage license, birth certificates, and a naturalization certificate. It contains a letter from the applicant’s husband, signed on August 29, 2005, in which he states that the applicant is helping him with child support payments and an Internal Revenue Service debt because he has not been working at this time. The AAO notes that [REDACTED] does not specify in his letter why he is unemployed. The record reflects that the applicant is 45 years old. She entered the United States in 1999 and married [REDACTED] on April 14, 2001.

The AAO finds that the district director was correct in denying the waiver application.

[REDACTED] indicates that he has not been working and that his wife has been assisting him financially. As held by the U.S. Supreme Court in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship. Thus, the fact that the applicant is financially supporting her husband is insufficient in itself to establish extreme hardship as required by the Act.

Courts in the United States 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*, *supra* at 1293; *Cerrillo-Perez*, *supra* at 1424 (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, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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.

As described by the applicant, she and her husband have a close relationship that will be destroyed if she must leave the country. The applicant expresses that she will be devastated if separated from her husband. 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 to whom he has been married for six years. However, the AAO finds that 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, as based on the record. 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.*

There is no evidence in the record to establish that M [REDACTED] will endure extreme hardship if he joins the applicant in Honduras. It is noted that 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). 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. 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."

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] 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 there is no evidence in the record to establish that the applicant would be completely unable to find work in Honduras.

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.