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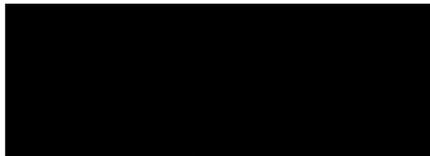
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
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U.S. Citizenship  
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FILE:

Office: PANAMA CITY, PANAMA

Date: **MAY 22 2007**

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), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant, a citizen of Ecuador, was found 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). The applicant was also found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband, a United States citizen, would suffer extreme hardship if the applicant is required to remain in Ecuador. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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 states, in pertinent part, the following:

- (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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (B) Aliens Unlawfully Present.-
  - (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant attempted to enter the United States, fraudulently, in 1995. Specifically, the record reflects that the applicant attempted to enter the United States through John F. Kennedy International Airport in New York on April 14, 1995 by presenting a photo-substituted passport with a valid visitor visa issued to an individual named [REDACTED]. He was placed in secondary inspection, swore under oath that he was indeed Jorge [REDACTED] and never revealed his true identity. He was removed from the United States on April 15, 1995. He is therefore inadmissible to the United States for making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that the applicant entered the United States, without inspection, on or around June 15, 1995. He did not depart the United States until September 2004. The District Director found the applicant inadmissible based upon the seven-year period of time that he was unlawfully present in the United States between April 1, 1997 (the date the unlawful presence provisions of the Act were enacted) and his September 2004 return to Ecuador. As he had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the District Director correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's wife. 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).

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The record reflects that the applicant's wife is a thirty-three-year-old citizen of the United States. She and the applicant have been married since September 22, 2001.

The record contains two affidavits from the applicant's wife. In her first affidavit, dated October 30, 2005, the applicant's wife stated that being separated from her husband has been very stressful; that she had to drop out of college because she could not concentrate on her studies; that she had to resume full-time employment; that she is always depressed; that her mother has muscular degeneration in her back and needs emotional support; that her sister is deeply depressed and needs emotional support; that

she cannot provide emotional support to her family members because she is emotionally distraught herself; that she does not think she could live in Ecuador; that she does not speak the Spanish language; and that she has to send money to the applicant.<sup>1</sup>

In her second affidavit, dated August 7, 2006, the applicant's wife stated her great love for the applicant; that the applicant is a gentle and caring man; that he is a good worker and a good man; that she and the applicant cannot start a family, which is her dream, while living in separate countries; that she cannot live in Ecuador because it is very bad to live in; that her family would be devastated if she moved to Ecuador; that her son is ready to start a family of his own and that he would be devastated if she were not available for him and his family; that she has no one to share her life experiences with; that she and the applicant want the American Dream; and that she thinks the applicant deserves a second chance.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

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 wife will face extreme hardship if the applicant is refused admission. Particularly if she remains in the United States, the record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Ecuador and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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

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<sup>1</sup> The applicant's wife has submitted no documentary evidence to support her assertion that she suffers from depression, or that her mother and sister suffer from medical disorders that require her support. Simply going on record without supporting documentary evidence is not sufficient for purposes 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)).

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 finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant’s wife would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

The AAO finds that the applicant failed to establish extreme hardship to his United States citizen spouse.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is dismissed. The waiver application is denied.