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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LIMA, PERU

Date: APR 08 2008

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), 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 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 waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, 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 Brazil, 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 OIC 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 Brazil. 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 OIC found that the applicant had procured a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willfully misrepresenting a material fact. The OIC found that the applicant had committed such acts on two occasions: (1) after entering the United States with a tourist visa on March 30, 1999, she procured unauthorized employment; and (2) upon entering the United States on September 5, 2001, she did not reveal her previous violations of immigration status to the immigration inspector. Counsel disputes that the applicant is inadmissible under this section.

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 OIC found that the applicant entered the United States, on March 30, 1999 and did not depart the United States until May 30, 2001, more than 360 days after the expiration of her authorized period stay. The OIC also found that the applicant entered the United States on September 5, 2001 and did not depart the United States until June 2004, more than 360 days after the expiration of her authorized period stay. As she had resided unlawfully in the United States for more than one year and now seeks admission within ten years of her June 2004 departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant attempted to enter the United States with the tourist visa again, on August 13, 2004. She was denied entry into the United States. She made an initial claim to political asylum and was detained at the Hampton Roads Regional Jail from August 13, 2004 until September 10, 2004. She withdrew the application for political asylum and returned to Brazil. The applicant married her husband in Brazil on January 30, 2005.

I. The applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and is in need of a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States.

The AAO disagrees with counsel's contention that the applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Counsel asserts that "CIS must conclude that the waiver is not necessary, because there is no evidence of misrepresentation." However, the record indicates that the applicant entered the United States with a tourist visa on March 30, 1999, and began working within 15 days of her admission. Counsel asserts that CIS "is inferring that [the applicant] must have lied to an immigration officer at the port of entry," and that "there is no evidence of any dialog [sic] or exchange of documents. . ."

The *U.S. Department of State Foreign Affairs Manual* states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants . . . [f]ail to maintain their nonimmigrant status (for example, by engaging in employment).” *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by . . . [a]ctively seeking unauthorized employment and, subsequently, becomes engaged in such employment.” *Id.* at § 40.63 N4.7-1(1).

Under this rule, “when violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility.” *Id.* at § 40.63 N4.7-4. If the violative conduct occurs “more than 30 days but less than 60 days after entry into the United States, no presumption of misrepresentation arises . . . if the facts in the case give the consular officer reasonable belief that the alien misrepresented his or her intent, then the consular officer must give the alien the opportunity to present countervailing evidence.” *Id.* at § 40.63 N4.7-3. If the violative conduct occurs less than 30 days after entry into the United States, then a presumption of misrepresentation arises.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant began working within 15 days of her March 30, 1999 admission into the United States. The acceptance of employment after entering on a tourist visa is violative conduct under the 30/60-day rule. As she began working almost immediately after entering the United States with a tourist visa, a presumption of misrepresentation arises, as it demonstrates a preconceived intent to accept employment.

The applicant, therefore, is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and is in need of a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States.

II. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and is in need of a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to enter the United States.

As noted previously, the OIC found that the applicant entered the United States, on March 30, 1999 and did not depart the United States until May 30, 2001, more than 360 days after the expiration of her authorized period stay. The OIC also found that the applicant entered the United States on September 5, 2001 and did not depart the United States until June 2004, more than 360 days after the expiration of her authorized period stay. As she had resided unlawfully in the United States for more than one year and now seeks admission within ten years of her June 2004 departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and is in need of a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to enter the United States.

III. The applicant does not qualify for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), or section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having determined that the applicant is in need of a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 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)(i) of Act, and under section 212(a)(9)(B)(v) of the Act, resulting from a violation of section 212(a)(9)(B)(i)(II) 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 herself is not a permissible consideration under either statute. In the present case, the applicant's husband is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect 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).

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, 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 (9th 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.

Additionally, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 record reflects that the applicant’s husband is a forty-seven-year-old citizen of the United States. He and the applicant have been married since January 30, 2005. The Form I-130, Petition for Alien Relative was filed on January 30, 2005 and approved the following day. The applicant’s immigrant visa was denied on August 11, 2005 and the Form I-601 was filed shortly thereafter. The OIC in Lima, Peru denied the Form I-601 on January 26, 2006.

The record contains several documents submitted in support of a finding of extreme hardship. In her September 1, 2005 letter, previous counsel stated that the single and most relentless hardship caused by the separation has been the emotional strain on the couple’s new marriage; that the applicant’s husband has not been sleeping well; that the applicant’s husband has not been able to focus on his life and work in the United States; that the applicant’s husband finds the stress of his job and the stress of the applicant’s situation extremely taxing; that the physical stress caused by the applicant’s situation caused her husband to become ill for six weeks in 2004; that the applicant’s husband lacks energy due to the applicant’s immigration situation; that the applicant’s husband has a general lackluster feeling due to the applicant’s immigration situation; that the applicant’s husband has incurred \$38,000 in debt due to the separation; that the applicant’s husband is sending money to the applicant in Brazil, as her earning potential there is limited; and that the applicant’s husband suffers from periods of depression, anger, and sheer helplessness.

In their August 30, 2005 letter, the applicant’s husband’s parents state that the applicant’s husband is experiencing extreme financial difficulty; that the applicant’s husband is experiencing emotional stress; and that the applicant’s husband is burdened because of the trips to Brazil that he must take.

The record also contains two letters from the applicant’s husband. In his first letter, dated September 9, 2005, the applicant’s husband states that being apart from the applicant has created extreme hardship; that being apart from the applicant has placed tremendous stress on all aspects of his life; that he constantly worries about the applicant’s wellbeing; that his constant worry has taken its toll on his health, finances, work, and day-to-day life; that he was sick for six weeks in September 2004 due to the stress created during the applicant’s detainment in Virginia; that seeing the applicant in jail and being unable to do anything about it hurt him deeply; that he was devastated after the applicant was removed from the United States; that he began experiencing periods of extreme exhaustion after the applicant was removed, which resulted from changes in the level of thyroid hormones in his body due to ongoing stress; that it became necessary for him to take blood tests on a monthly basis and to consult with a doctor regarding the correct amount of medicine to take; that he has begun to take larger doses of medication to moderate the thyroid hormone level in his blood; that his periods of exhaustion are exacerbated by the stress created through his efforts to help the applicant stay optimistic in the face of the adversity they are facing; that his periods of exhaustion alternate with the times he experiences heart palpitations; that when his heart palpitates he cannot sleep, and that he now rarely sleeps through the night; that the ability to communicate and nurture his marriage is hampered by the uncertainty surrounding their situation; that due to the time differences between Brazil and the United States it is difficult to time his calls when the

applicant is awake and available, and that he must call after work or during his lunch break, both of which are times he used to take a break from work or exercise; that, with less time to rest and exercise his stress level goes up; that his ability to work has been hampered by the applicant's immigration situation; that he has a demanding job which requires long hours and constant focus, but that, due to the applicant's immigration situation, he now finds it difficult to complete simple tasks and meet the needs of the people who work for him; that his co-workers have expressed concern for his wellbeing, as it is obvious that he is "not himself"; that he has significantly less energy than in the past as a result of worrying about the applicant; that he now finds it difficult to participate in the physical activities he once enjoyed, such as running, tennis, and basketball; that physical activity lessens the severity of the varicose veins in his legs; that, without regular exercise his varicose veins have become more severe and his legs ache constantly; that he had gained weight and feels sluggish; that the constant stress he feels affects his immune system and makes him more prone to getting sick; that he is experiencing financial hardship as a result of up to three international phone calls per day; that he has made three trips to Brazil and four trips to Mexico to visit the applicant; that he is now \$38,000 in debt; that he now has no money for anything but bills; that without the applicant's financial contribution he will have to sell the house he purchased for them; that he has been financially supporting the applicant in Brazil; that his life is spiraling out of control due to the extreme hardships he is facing; that he has never felt complete helplessness as he now does; and that, due to the applicant's age, the longer the couple is separated the more difficult it will be to start a family together.

In his second letter, dated March 14, 2006, the applicant's husband reiterates the extreme emotional and financial hardships he is facing. He notes the applicant's age, and states that it will be difficult to conceive a child together as more time passes. He states that the little time they are able to spend together is largely spent working on immigration paperwork. He explains how the separation has adversely affected his health and career. He states that he is not living but rather merely staying alive.

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).

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to remain in Brazil, regardless of whether he joins her in Brazil or remains in California. 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.

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 husband will face extreme hardship if the applicant is refused admission. The record does not demonstrate that he faces greater hardships 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 his situation, the financial strain of visiting the applicant in Brazil, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law. The applicant has failed to demonstrate that her husband is facing greater emotional and financial hardship than that normally faced by others in his situation. Although the record references medical hardships faced by the applicant’s husband as a result of the separation, the record contains no evidence to document any of these assertions. 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)).

Nor has the applicant established that her husband would face extreme hardship if he joined her in Brazil. The decision of whether to remain in the United States or relocate to avoid separation is a factor that every case presents, and the record fails to demonstrate that the applicant’s husband would face hardship beyond that normally faced by others in his situation if he were to relocate to Brazil. Diminished standards of living and cultural adjustment are to be expected if the applicant’s husband relocates to Brazil. Joining the applicant in Brazil would also allow the couple to start a family which, as stated in the record, is important to the applicant and her husband.

The AAO turns next to counsel’s citation of *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA stated the following:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing “extreme hardship” for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing “exceptional and extremely unusual hardship” are essentially the same as those that have been considered for many years in assessing “extreme hardship,” but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

(Publication page references not available on Westlaw). (section III of decision).

The factors cited by counsel, which derive from *Matter of Anderson*, such as age, length of residence, immigration history, and position in the community can only be considered as to how those factors contribute to the hardship faced by the qualifying relative, in this case the applicant’s husband, and not the applicant herself. In accordance with the preceding discussion, the applicant in this case has failed to establish that her husband would face extreme hardship if the waiver application were denied.

The AAO also finds that the applicant’s marriage to her husband constitutes an after-acquired equity. The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie

in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

Counsel asserts on appeal that the applicant's husband expected that marrying the applicant "would solve all her immigration problems." Counsel states that "nothing in the record indicates that [the applicant's husband] knew the complexity of his wife's immigration situation before [the applicant] was refused an immigrant visa." However, the AAO notes that the applicant's immigrant visa was refused on August 11, 2005, nearly a year after she had been detained in Virginia for nearly a month and subsequently removed from the United States. The marriage took place in January 2005, several months after the applicant's detention and removal. Contrary to counsel's assertion, the record indicates that the applicant's husband was aware that the applicant's immigration case was complex at the time the marriage took occurred.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO finds that the OIC properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The AAO finds that the applicant failed to establish extreme hardship to her United States citizen husband.

Finally, the AAO notes that the OIC's decision was a combined adjudication of the applicant's Forms I-601 and I-212. As the Form I-601 will be denied, approval of the Form I-212 would serve no purpose, since the applicant is inadmissible.

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.