

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H₂



FILE: [REDACTED] Office: NEWARK, NJ Date: **AUG 05 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Excludability 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, Newark, New Jersey, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), and section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(9)(C)(i)(I). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 44-year-old native and citizen of Ecuador who was found inadmissible to the United States. The record reflects that the applicant's spouse is a United States citizen. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her husband on her behalf. She presently seeks a waiver of inadmissibility in order to adjust her status to lawful permanent resident and remain in the United States.

The district director determined that the applicant was inadmissible, and that she was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to her spouse. The waiver application was denied accordingly.

On appeal, the applicant, through counsel, maintains that she is not inadmissible under section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9).¹ Nevertheless, the applicant does not dispute that she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).² The record reflects that, on at least two occasions, the applicant sought admission to the United States by fraud. The applicant claims, however, that she is eligible for a waiver of inadmissibility because her departure would result in extreme hardship to her husband and children. The AAO finds that she is not.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien”

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the

¹ Because the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and ineligible for a waiver, the director's finding of inadmissibility under section 212(a)(9) of the Act need not be addressed in this decision.

² Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

In general.—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.

applicant herself is not a permissible consideration under the statute. Hardship to the applicant's children is also not a relevant consideration under the statute.

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. 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 has held:

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's spouse, [REDACTED], is a 45-year-old native of Ecuador who became a U.S. citizen upon his naturalization in 2004. The couple met in 1983, and married in 1989. They have two U.S. citizen children, born in 1990 and 1995. The record contains a sworn statement executed by the applicant's spouse stating, in relevant part, that he is employed full-time and provides all the financial support for the family. He explains that the applicant cares for the couple's teenage children. The couple owns their own home. The record also contains a psychological evaluation concluding that separation from the applicant would cause "severe and enduring harm and hardship to" her family. See Psychological Evaluation by [REDACTED] Ph.D. In her Brief, the applicant states, in relevant part, that 9 of her husband's siblings and his parents reside in the United States. See Applicant's Brief at 2. The applicant further indicates that her husband would "have to scramble to substitute her contributions to the running of the household." *Id.* The applicant claims that her departure would negatively impact her children, particularly their education. *Id.* The applicant lists her sons' educational achievements. *Id.* She also mentions the limited educational and employment opportunities, as well as the political and economic situation, in Ecuador. *Id.*

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 spouse would face extreme hardship if the applicant is denied the waiver. Although the AAO recognizes that the family's separation would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). The record also does not establish that the applicant's spouse would face extreme hardship should he relocate to Ecuador. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (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"). In sum, the record at best indicates that the applicant's spouse would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. 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 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th 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). 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 also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.