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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE, MARYLAND

Date: **AUG 05 2008**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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 APPLICANT:

[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.

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], a native and citizen of Honduras was found to be 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated March 2, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record reflects that the applicant, in a sworn statement, stated that she claimed to be married when she applied for a visa at the U.S. consulate in February 2000. The applicant stated that she entered the United States in March 2001, left the country to return to Honduras in December 2001, and had her passport reflect an earlier departure date by sending it ahead to Honduras to be stamped as if she had already left the United States. She stated that she returned to the United States on January 12, 2002 on a visitor's visa.

Based on the evidence in the record, the applicant gained admission into the United States by willfully misrepresenting a material fact, her marital status and her actual departure date from the United States. She is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the 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.

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 is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse, [REDACTED]. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

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).

Extreme hardship to the applicant's husband must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in Honduras. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel states that the district director erred by requiring a higher legal standard, that of exceptional hardship. Counsel states that [REDACTED] married his wife with the intent of sharing a life with her. He states that [REDACTED] would not accompany his wife to Honduras and that this is beyond what would normally be expected because they have a close relationship, depending upon each other. Counsel states that during his childhood [REDACTED] endured an abusive father who physically, verbally, and emotionally abused his family. Counsel states that when [REDACTED] was young he had a traumatic fall from a tree, which he attributes to the headaches that he now has. Counsel states that [REDACTED] has a positive relationship with his wife, who has enabled him to stop using alcohol, end his self-destructive behavior, and develop a sense of self-worth. Counsel states that the psychosocial findings by [REDACTED] establish that [REDACTED] would have a lifetime of negative consequences if separated from his wife.

The record contains a psychosocial evaluation, income tax records, wage statements, affidavits, a U.S. Department of State report on Honduras, residential lease agreements, a marriage certificate, and other documents.

The letter dated February 23, 2004 by [REDACTED] states that [REDACTED] is employed with Atdeco, Inc., earning \$10.50 per hour.

The income tax record for 2003 reflects [REDACTED] as earning \$12,419 in income and \$1,844 in unemployment compensation. [REDACTED] did not have any income. A nephew is shown as a dependent.

The residential lease agreement made on November 1, 2006 indicates the [REDACTED] monthly rent is \$650.

In the psychosocial history, [REDACTED] a licensed social worker, stated that [REDACTED] conveyed the following. He has a close and loving relationship with his wife. He has two children from two previous relationships. He is the youngest of five siblings. When five years old, he fell from a tree and was hospitalized for six months with skull fractures; his doctor predicted that he would have lasting consequences from this. He believes that the headaches, visual problems, and dizzy spells he has at times are due to this accident. He grew up in a home with domestic violence. His father physically, verbally, and emotionally abused the family on a daily basis. He was hit by his father so hard that his body has several permanent scars. Because of the abuse, he dropped out of school in the seventh grade, left home, and started working. He has two children from prior relationships that did not work out because the women had tempers and thrived on conflict. He is relaxed and comfortable with his wife, has stopped drinking, and is taking care of his health. He has shared the pain of his childhood with his wife and she has helped him gain self-esteem that his father destroyed. He is now investing time to form a relationship with his children. He seldom speaks with his son and has not visited him in years because his son's mother does not want him around. He speaks with his daughter 2-3 times a week and visits her monthly. He does not want to leave his children to live in Honduras; he wants to be active in their lives. [REDACTED] concluded that the applicant's husband will experience great hardship if separated from his wife.

[REDACTED] conveyed the following to [REDACTED] about her life. Her father abandoned the family while she was young. When she was six years old, she worked with her mother and siblings collecting coffee, which her mother cultivated along with raising cattle. Her mother was negligent of the family's emotional needs. She completed high school with vocational training in computers and worked as a secretary for the coffee industry.

[REDACTED] stated that within this relationship [REDACTED] is finding a sense of worth and his self-image is improving. She stated that he is happier and less anxious and in separating [REDACTED] from his wife he could have emotionally negative consequences that would last a lifetime.

In his affidavit, [REDACTED] stated that his life changed after marrying the applicant and that he would suffer if she left the country. He stated that he could not accompany her to Honduras because he is not familiar with the culture and does not know anyone there.

The affidavit by ██████████ stated that she has a beautiful relationship with her husband, and that he has children from prior relationships and that he has a wonderful relationship with his children and has always supported them.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record establishes extreme hardship to the applicant's husband if he were to join the applicant to live in Honduras.

The conditions in the country where the applicant's husband would live if he joined his wife are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Because Honduras is a country that is designated for Temporary Protected Status (TPS) through January 2009, the AAO finds that ██████████ would experience extreme hardship if he were to join his wife to live in Honduras. TPS is a temporary immigration status granted to eligible nationals of designated countries (or parts thereof). In 1990, as part of the Immigration Act of 1990 ("IMMACT"), P.L. 101-649, Congress established a procedure by which the Attorney General may provide TPS to aliens in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. The U.S. Government has determined that it is unsafe for Honduran nationals to return to their home country, the AAO finds this to be equally true for U.S. citizens.

The record fails to establish that ██████████ would experience extreme hardship if he were to remain in the United States without his wife.

With regard to the psychosocial history of ██████████ the input of a mental health professional is respected and valuable; however, the AAO notes that the report is based on a single interview between the applicant's spouse and the social worker. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for abuse or alcoholism. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering ██████████ findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

██████████ stated that he would suffer if the applicant left the country and he conveyed how his wife has helped him emotionally. With regard to family separation, courts in the United States have stated that "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, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s husband, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

██████████ makes no claim of extreme financial hardship if he were to remain in the United States without his wife.

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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship to the applicant’s husband in the event that he remained in the United States without the applicant. 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 section 212(i) of the Act, 8 U.S.C. § 1182(1).

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(i) 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.