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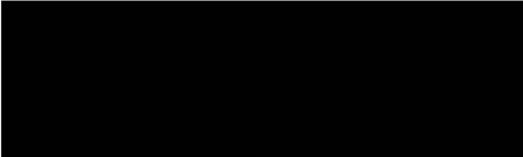
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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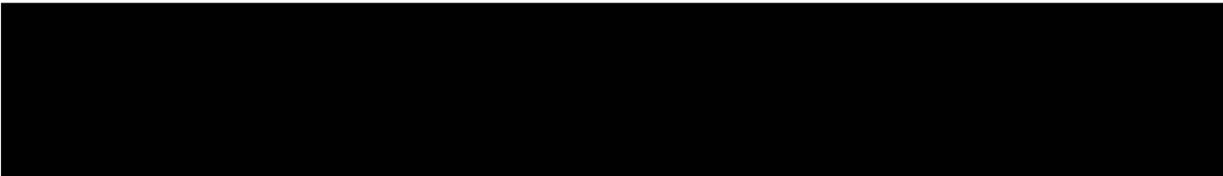


FILE: [Redacted] Office: PHOENIX, AZ Date: **JAN 31 2008**

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Phoenix, Arizona, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(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 37-year-old native and citizen of Ecuador who was found 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). The record reflects that the applicant's spouse, [REDACTED] is a 41-year-old native and citizen of Mexico who has been a lawful permanent resident of the United States since 1990. The couple was married on July 17, 1993, and has three U.S. citizen children. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her spouse. The applicant was admitted to the United States in May of 1991 using a fraudulent passport and visa. The applicant presently seeks a waiver of inadmissibility in order to remain in the United States and adjust her status to lawful permanent resident.

The district director found the applicant to be inadmissible. The director further found the applicant ineligible for a waiver upon determining that she had not established that her spouse would face extreme hardship should the waiver be denied. The application was denied accordingly.

On appeal, the applicant, through counsel, states that the director erred in applying an incorrect standard of proof. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant indicates that a detailed brief will be submitted within 30 days of the appeal. The AAO did not receive any brief or additional evidence in this matter. On January 23, 2008, the AAO requested that counsel submit the brief, along with proof that it was timely filed. The AAO has not received any brief to date. The matter will therefore be decided based upon the evidence already in the record.

Section 212(a)(6)(C)(i) of the Act 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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on her sworn testimony stating that she had entered the United States in May of 1991 using a fraudulent passport and visa. The applicant does not dispute this finding. The director's determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

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 . . . .”

8 U.S.C. § 1182(i)(1). 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant’s children also may not be considered.

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 evidence in the record includes, in relevant part, copies of the applicant’s birth and marriage certificates, her spouse’s lawful permanent resident and social security cards, and her children’s birth certificates. The AAO notes that the applicant submitted no evidence relating to any potential hardship faced by her spouse. There is no indication in the record of what family or community ties the applicant’s spouse has in the United States, nor is there any evidence that the couple’s separation would cause emotional, financial, or other hardships. There is also no indication of what, if any, hardship the applicant’s spouse would face should he decide to relocate to Ecuador. Absent any evidence to the contrary, the AAO must find that if the applicant is refused admission, her spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in similar circumstances. 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 (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). 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); *see also 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 proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. *See* 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.