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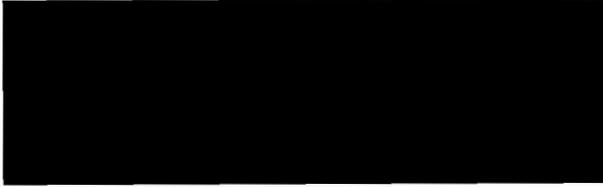
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U.S. Citizenship  
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Services

#2

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FILE:



Office: MEXICO CITY (PANAMA)

Date:

**JUL 16 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)

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

The applicant is a native and citizen of Colombia. He was removed from the United States after being found inadmissible 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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated March 27, 2006. The applicant also applied for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212), and this application was denied in the same decision denying the waiver application. In situations like the applicant's case where an applicant must file Form I-212 and Form I-601, the Adjudicator's Field Manual states that Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states:

If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

Thus, the AAO will only consider the applicant's waiver application and inadmissibility under section 212(a)(6)(C)(i) of the Act.

On appeal, the applicant asserts that denial of the waiver would result in extreme hardship to his U.S. Citizen wife. Specifically, the applicant states that separation from his wife has resulted in extreme emotional hardship as well as financial hardship because the applicant's wife cannot pay her expenses without the applicant's financial support. The applicant submitted the following evidence in support of the waiver application and appeal: affidavits prepared by the applicant and his wife, documents related to the applicant's wife's studies, student loan and credit card statements, cancelled checks, copies of used calling cards, copies of boarding passes and itineraries documenting trips to Colombia, and photographs of the applicant and his wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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 provides:

- (1) The [Secretary] may, in the discretion of the [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 [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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. 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 record reflects that the applicant is a thirty year-old native and citizen of Colombia who attempted to enter the United States at Miami, Florida on August 1, 2002 by presenting a fraudulent Colombian passport and U.S. visa under the name [REDACTED]. The applicant was detained upon entry and placed in expedited removal proceedings. He remained detained until October 9, 2002, when he was removed to Colombia. The record further reflects that the applicant's wife is a twenty-seven year-old native of Colombia and naturalized U.S. Citizen. She currently resides in Elizabeth, New Jersey.

The applicant claims that if he is refused admission to the United States, the continued separation from his wife will cause her to suffer extreme emotional and financial hardship. In support of this assertion he submitted a declaration prepared by his wife that states,

I will suffer extreme hardship in the form of emotional difficulties as a result of this separation. We are a young couple and under a ten-year bar, I would not be able to reside with my husband for a great length of time. My marriage would undoubtedly fail due to the distance and lack of normal marital relations. *Letter from* \_\_\_\_\_ *dated* April 21, 2006.

The applicant and his wife both state that they love each other and that being separated from each other has resulted in emotional hardship. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her distress over the prospect of being separated from her spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists. The emotional hardship the applicant's wife claims she will suffer appears to be the type of hardship normally to be expected when a family member is excluded or deported. *See 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).

The applicant's wife further states that the effects of their continued separation on her financial situation also amount to extreme hardship because she does not earn enough to pay all of her expenses. She submitted documents including credit card statements and canceled checks to document her expenses, but did not submit documentation of her income. Further, the AAO notes that the applicant and his wife have never lived together in the United States, as he was detained and removed when he attempted to enter the country in 2002. The applicant's wife did not explain how she was able to support herself before she married the applicant in 2004. The applicant's wife submitted documentation indicating that she has incurred additional expenses because the applicant is in Colombia, including airfare, long-distance telephone bills, and remittances to support him because he is not working. There is no indication, however, that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's exclusion. Living without the applicant's financial support and the additional costs associated with travel and telephone calls to Colombia are a common result of exclusion or deportation, and do not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife states that she could not relocate to Colombia because she is "no longer familiar with the laws and customs," and also states that she and the applicant plan to have children together, and Colombia

would not be an appropriate or safe environment to raise children. *See undated affidavit of [REDACTED]* She further states that Colombia is “plagued with violence, poverty, and civil strife.” *Id.* The applicant did not submit any information or documentation on conditions in Colombia to support these assertions. 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)). There is insufficient evidence on the record to establish that relocating to Colombia would result in extreme hardship to the applicant’s wife. Her concerns about difficulty readjusting to the laws and customs of the country appear to involve the type of disruption or inconvenience normally experienced by family members as a result of deportation.

The emotional and financial difficulties that the applicant’s wife would suffer appear to be the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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. 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.