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U.S. Citizenship
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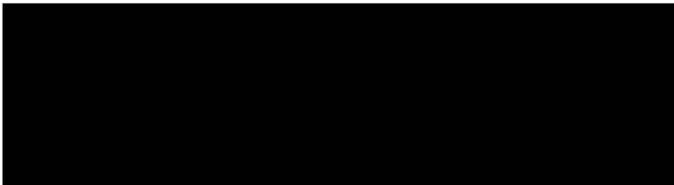
Date: JUN 23 2008

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 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 waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States under section 212(a)(6)(A)(i) or section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) or 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States without inspection or having entered the United States using fraud and misrepresentation.. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to document her entry into the United States and did not qualify for relief under section 245(i) of the Act. The district director also found that the applicant's spouse would not suffer extreme hardship as a result of the applicant's removal from the United States. *Decision of the District Director*, dated April 13, 2006.

On appeal, counsel asserts that the district director's grounds for dismissal are not supported by the evidence presented and, therefore, the waiver should be granted. *Letter from Counsel*, dated May 3, 2006.

While the AAO notes the district director's findings regarding the applicant's ineligibility for adjustment under section 245(i) of the Act, it will not consider this aspect of her decision. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO does not have jurisdiction over an application filed under section 245(i) of the Act. The AAO's consideration of the record will, therefore, be limited to the applicant's inadmissibility under section 212(a)(6)(C) of the Act.

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.

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.

The applicant states that she entered the United States on May 4, 1999 and August 7, 2001 using a passport and B-2 tourist visa belonging to her sister, [REDACTED]. *Applicant's Statement*, dated March 3, 2006. The applicant also states that on August 7, 2001, she flew from Ecuador to Houston, Texas and then on to LaGuardia, New York where she was inspected and admitted to the United States. *Applicant's Statement*, dated May 2, 2005. The applicant explains that she entered the United States with her sister's passport because she was unable to produce the documents requested by the U.S. consulate in Ecuador in order to obtain a visa. *Applicant's Statement*, dated March 3, 2006. The applicant asserts that upon her entry in 2001 she mailed her sister's passport back to Ecuador. *Applicant's Statement*, dated March 3, 2006. Citizenship and Immigration Services (CIS) records show that a [REDACTED] entered the United States on May 4, 1999 with a visa issued on March 15, 1996 and that she entered the United States on August 7, 2001 and February 3, 2005, with a visa issued on April 18, 2001. The applicant submits copies of several pages from her sister's passport showing a copy of a B-2 tourist visa issued on April 18, 2001 and U.S. entry stamps for August 7, 2001 and May 4, 1999.

The AAO notes the concerns indicated by the district director concerning inconsistencies in the submitted evidence, as well as the absence of any objective evidence to support the applicant's claim of having entered the United States with inspection. It also finds the record to lack the documentation necessary to prove the applicant's claims that it was she who entered the United States in August 2001 not her sister. However, whether the applicant entered the United States using her sister's passport as she claims or has misrepresented the circumstances under which she entered the United States in applying for adjustment, she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having procured or for having attempted to procure admission to the United States through fraud or willful misrepresentation.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the qualifying relative is the applicant's spouse. Hardship experienced by the applicant as a result of separation will not be considered in this section 212(i) waiver proceeding, except as it affects her spouse. 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS*, *supra*, held further 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.

The record includes the following evidence in support of the applicant's claim that her spouse would suffer extreme hardship if she were removed from the United States: a statement from the applicant's spouse, dated December 5, 2005; and a February 22, 2006 psychological evaluation of the applicant's spouse, prepared by [REDACTED], a licensed psychologist.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Ecuador. On appeal, counsel asserts that the applicant's spouse has no family outside the United States and that he does not speak Spanish. She further contends that he would be unable to find work in Ecuador to support himself and that he would, therefore, be unable to maintain the middle-class lifestyle he enjoys in the United States. Counsel also points to the extremely low standard of living and the political instability in Ecuador to demonstrate the hardship that would be suffered by the applicant's spouse if he moved to Ecuador with the applicant.

While the AAO notes counsel's statements, it finds them to be insufficient proof that the applicant's spouse would experience extreme hardship if he relocated with the applicant to Ecuador. Although counsel indicates that the applicant has submitted evidence with the Form I-601 to document the low standard of living and political instability in Ecuador, the record includes no evidence of economic and political conditions in Ecuador. Moreover, no evidence has been submitted to establish that the applicant's spouse, a senior electronics technician at Siemens Building Technology in Florham Park, New Jersey, would be unable to obtain employment in Ecuador or that the applicant would be unable to obtain employment in Ecuador to assist in supporting their family. There are also no statements from the applicant or the applicant's spouse that indicate he has no family outside the United States and does not speak Spanish. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States following her removal. In his statement, the applicant's spouse states that the removal of his wife from the United States would result in unbearable suffering and grief on his part, and that he would be left with nothing but "untold loneliness and a void that would be impossible to fill." The applicant's spouse's claim of emotional hardship is documented by the psychological evaluation prepared by [REDACTED] who states that she treated him for chronic depression between July 2003 and October 2005. Dr. [REDACTED] states that she is concerned about the effect that the applicant's removal would have on her spouse's ability to function. She reports that the applicant's spouse previously abused alcohol and that the stability of his relationship with the applicant is likely a significant component of his ability to maintain his sobriety. The applicant's spouse, [REDACTED] contends, would be at risk for a reexacerbation of his depression and resumption of his self-destructive use of alcohol should the most significant attachment in his life be severed or disrupted. She concludes that the impact of the applicant's removal on her husband would be greater than on other individuals given his past depression, abuse of alcohol and repeated loss of significant attachments in his life. In light of [REDACTED]'s extended medical treatment of the applicant's spouse, the AAO finds her evaluation of the impact of the applicant's removal on him to establish that he would suffer extreme hardship if he remained in the United States without the applicant.

In that a review of the documentation in the record fails to establish that a denial of the applicant's waiver request would result in extreme hardship to the applicant's spouse in the event that he relocates to Ecuador and in the event that he remains in the United States, the applicant has not established eligibility for a waiver under section 212(i) of the Act. 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. Accordingly, the appeal will be dismissed.

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. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.