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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

Office: LOS ANGELES, CA

Date:

MAR 07 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED], is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to 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 pursuant to 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 to a qualifying relative. *Decision of the District Director*, dated December 28, 2005.

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 elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record reflects that the applicant states that she entered the United States in 1998 by presenting to an immigration inspector at the Los Angeles airport a Guatemalan passport and a U.S. visitor's visa in the name of [REDACTED]. The applicant states that, when she was a teenager, she had a disagreement with her parents after she gave birth to a baby. She conveys that after the disagreement she decided to move in with [REDACTED] and [REDACTED] who were friends of the family. She states that she started to use the family's surname. The applicant claims that while living with the family she lost contact with her biological parents and was seen by the community as part of the family of [REDACTED] and [REDACTED]. The applicant claims that years passed and her "caregivers (family)" suggested that she travel and they applied for a passport for her using their last name, because at that time she was considered part of their family. She states that she had no intention of staying in the United States. The applicant states that while in the United States her friends got her in touch with her biological parents, who were living in the United States, and that she re-established a relationship with them. She states that she eventually realized there was no one to return to in Guatemala, not even her daughter.

Counsel claims that the applicant is not inadmissible under section 212(a)(6)(C) of the Act. He states that the applicant's caregiver family applied for the passport using their last name because the applicant was considered a member of their family. Counsel claims that if the passport was issued and granted by the official authorities in Guatemala it is not a fraudulent document and there is no misrepresentation of fact. Counsel maintains that this is simply a question of acquiring a new identity and a new name. He states that the changing of the name could not be construed as done to gain "other benefits," because the beneficiary never met her husband before leaving Guatemala. Counsel states that the consulate's grant of the visitor visa is not for "other benefits" or for travel purposes.

To obtain a visitor's visa, the applicant completed Optional Form 156, the standard nonimmigrant visa application, which is contained in the record. The form requires a person to list the name shown on the person's passport and all other names used as well. Here, the form shows the applicant listed her assumed name, the one that she claims is shown on the Guatemalan passport. But the AAO notes that the applicant failed to list the other name that she used, which would have been her true name, [REDACTED]. The form shows that the applicant misrepresented the identity of her parents, showing her "caregivers" Maria [REDACTED] as her mother and [REDACTED] as her father.

The AAO notes that the applicant's use of the assumed identity constitutes a material misrepresentation based on the elements set forth in *Matter of S- and B-C-*, *supra*. The applicant used an assumed identity in connection with an application for a visitor's visa and her subsequent entry into the United States was based upon that assumed identity. A line of relevant inquiry was cut off by the use of the assumed identity. Had the consular post in Guatemala known the applicant was not [REDACTED] the daughter of [REDACTED] and [REDACTED] who lived in Guatemala, but was the daughter of [REDACTED] and [REDACTED] who resided in the United States along with their daughters, the applicant might well not have been granted the visitor's visa and therefore would not have gained admission into the United States.¹

"Where a person uses a false identity long before, and for reasons unrelated to, obtaining admission to the United States, and over a long period of time, misrepresentation as to identity made when applying to enter the United States has been held not to be material," *Matter of Gilikevorkian*, 14 I&N Dec. 454 (BIA 1973), citing *U.S. ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (C.A. 7, 1938).

In the instant case, the record establishes that the applicant's use of an assumed identity and the misrepresentation of her parent's identity were used to facilitate her entry into the United States. It is noted that no evidence in the record shows that the applicant used the false identity long before her entry into the United States.

Based on the record, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C) of the Act.

¹ Though the applicant indicated that she had lost contact with her biological family, letters in the record state that upon arrival in the United States she went to live with her biological sister, and several weeks later with her biological parents. This would appear to contradict her claim of locating and resuming contact with her biological family though information received from friends only after arriving in the United States.

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 an applicant and the applicant's child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to [REDACTED] and her child 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*, 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 joins the applicant, and in the alternative, that he remains in the United States. 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 asserts that the psychological evaluation of [REDACTED] establishes that he would experience extreme hardship if his wife's waiver application were denied, and counsel cites to *Huck vs. Attorney General*, 676 F. Supp. 10 (D.D.C. 1987) in support of his assertion. Counsel indicates that the record establishes the good character of the applicant, that the applicant and her husband purchased a house, and that the applicant has no ties to Guatemala. Counsel states that [REDACTED] does not speak Spanish and would have difficulty finding employment in Guatemala.

The record contains income tax records, pay statements, a marriage certificate, a psychological evaluation, letters, an employment letter, birth certificates, court records, photographs, and other documents.

The psychological evaluation of [REDACTED] by [REDACTED], a licensed psychologist, states that Ms. [REDACTED] cares for their son, [REDACTED], and [REDACTED] grandmother. He states that the [REDACTED] purchased a house and their monthly mortgage is approximately \$1,500. [REDACTED] states that [REDACTED] works full time averaging \$2,200 in income each month. He indicates that the [REDACTED] would like to have more children and that they are involved in their church. [REDACTED] conveys that [REDACTED] is worried about his son living in Guatemala as his son does not speak Spanish and would take years to adjust to life there. He states that [REDACTED] would not be able to provide for his son in Guatemala because he would not find gainful employment there. [REDACTED] found [REDACTED] to have Acute Anxiety Reaction, which he states qualifies as a psychiatric disturbance and indicates that [REDACTED] is experiencing a psychological hardship. He states that this hardship would become more serious over time if his wife were deported. He conveys that [REDACTED] would not choose to leave the United States and there would be no resolution to a separation caused by deportation. He states that as a Baptist [REDACTED] would have to deal with emotional guilt. He states that [REDACTED] son would be cut off from his mother. [REDACTED] states that because the family would never be able to spend any long-term time together, the emotions associated with separation would never be resolved.

The December 16, 2005 letter by the applicant conveys that all of her family is in the United States, that she loves her husband, and that she is taking care of her grandmother.

The December 14, 2005 letter by the applicant's husband states that his wife cares for his 98-year-old grandmother and their son. He expresses his concern about his son growing up without a mother. He states that he is dependent emotionally, economically, and physically on his wife and that she is an integral part of his family. He states that he would not be able to afford the mortgage payments without his wife caring for their son. He states that his wife is active with their church and is attending online school to obtain a medical assistant certificate. He states that Guatemala has a rising crime rate.

The letters by the applicant's in-laws convey that the applicant is caring for [REDACTED], who has serious health problems. They convey that the applicant is a member of the family who they love and rely upon.

The court record from the Superior Court of California, County of Los Angeles, shows the applicant as pleading *nolo contendere* to intentional corporal injury on spouse in 2003. She was ordered to complete a 52-week domestic violence class and not to molest, harass, or annoy the victim.

The April 19, 2004 letter by [REDACTED], Senior Pastor, states that [REDACTED] and her husband attend worship services consistently and that she has assisted with the Missions Ministry and the Convalescent Home Ministry.

The letter dated November 1, 2004 by [REDACTED], manager with City Wholesale Electric Company, conveys that [REDACTED] works full time, earning \$13.00 per hour.

The birth certificate in the record shows the [REDACTED] son was born on May 1, 2003.

The AAO will first address whether the record establishes that [REDACTED] would experience extreme hardship if he remained in the United States without his wife.

[REDACTED] states that he would not be able to afford childcare and pay the mortgage and other household expenses. Although the record contains documents of [REDACTED]'s income, it has no documentation of the family's household expenses and mortgage. Without this documentation, the AAO cannot determine whether [REDACTED] would be unable to afford childcare if his wife were removed from the country. 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)).

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).

With regard to the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment for the Acute Anxiety Reaction experienced by [REDACTED]. 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 [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Counsel's reference to *Huck vs. Attorney General*, 676 F. Supp. 10 (D.D.C. 1987) is not persuasive in establishing extreme emotional hardship to [REDACTED]. The court in *Huck* had a well-documented showing of [REDACTED]'s history of medical and emotional problems. It had a letter from a doctor who had treated Huck continuously for migraine headaches, dizzy spells, and emotional problems. It had a statement from a clinical psychologist who treated [REDACTED] for most of a year for episodes of acute and virtually incapacitating anxiety. *Id.* at 12. Here, the record does not contain documentation, other than a single interview, that would show a history of emotional problems of [REDACTED].

With regard to family separation, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's 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. As stated in *Perez v. INS*, 96 F.3d 390 (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; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is very concerned about separation from his wife and her separation from their son. [REDACTED] indicates that he has daily nausea, insomnia, mental and physical fatigue, insecurity, nightmares, and poor concentration. 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 he 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 required by the Act. The record before the AAO is insufficient to show that the emotional hardship experienced 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*.

The AAO will now address whether the record establishes that [REDACTED] would experience extreme hardship if he joined his wife to live in Guatemala.

The conditions of Guatemala, the country where [REDACTED] will join 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).

[REDACTED]'s claim of hardship stemming from inability to find work in Guatemala is not supported by evidentiary material. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Furthermore, a claim of not finding employment in Mexico does not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico did not reach "extreme hardship."

A significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986).

Although hardship to the applicant's child is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his child, is a relevant consideration.

The AAO finds that court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *In re Kao*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American lifestyle; the BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The record here establishes that the applicant's four-year-old son is not yet of school age. Thus, based on the aforementioned cases, *In re Kao*, *Ramos*, and *Prapavat*, the applicant's son would not experience extreme hardship if he were to join his father and mother to live in Guatemala.

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 deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. 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 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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.