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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER  
(RELATES)

Date: MAY 02 2008

IN RE: [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 Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident, the daughter of a naturalized United States citizen father, and states she is the daughter of a lawful permanent resident mother. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse, parents, and her United States citizen children.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon the applicant's lawful permanent resident spouse or lawful permanent resident parents<sup>1</sup> and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Director*, dated March 1, 2006.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that she had failed to meet the burden of establishing extreme hardship to her qualifying relatives as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*. Counsel also notes that CIS failed to consider the applicant's entire immigration history when assessing the hardship to her parents and failed to mention the fact that the applicant was erroneously taken into custody by Immigration and Customs Enforcement (ICE) and detained for 90 days in violation of the law. *Id.*

In support of the assertions made on appeal, counsel submits a brief. The record also includes, but is not limited to, medical records for the applicant's spouse; statements from the applicant's father; a statement from the applicant's mother; tax statements for the applicant and her spouse; W-2 Forms for the applicant's spouse; tax statements for the applicant's parents; W-2 Forms for the applicant's father; earnings statements for the applicant's father; a statement from the applicant's spouse; a statement from the applicant; W-2 forms for the applicant; and an employment letter for the applicant. The entire record was reviewed and considered in rendering this decision.

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)

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<sup>1</sup> The AAO notes that the applicant's father is a naturalized United States citizen. *See Naturalization Certificate.*

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that in 1986, the applicant entered the United States without inspection. *Form I-213, Record of Deportable Alien*, dated August 27, 1986; *Form I-221S, Order to Show Cause*. On September 8, 1986, an Immigration Judge ordered the applicant deported under the name of Maria Sillas-Mendoza. *Order of the Immigration Judge, Executive Office for Immigration Review, Office of the Immigration Judge*. On September 11, 1986 the applicant left the United States pursuant to her order of deportation. *Form I-205, Warrant of Deportation*. While in Guatemala, the applicant gave birth to a child. *Attorney's brief*. In May 1990, the applicant entered without inspection and has remained in the United States since that time. *Form I-213, Record of Deportable/Inadmissible Alien*, dated January 17, 2003. In August 1990 the applicant's father, then a lawful permanent resident, filed a *Form I-130, Petition for Alien Relative*, on behalf of the applicant, which was approved on October 4, 1990. *Notice of Action, Form I-130 Approval Notice*, dated October 4, 1990. On March 11, 1996 the applicant applied to adjust her status with the District Office in Boston, Massachusetts because her father's priority date had become current. *Form I-485*. On June 4, 1998 the applicant and her child had an interview at the District Office in Boston, Massachusetts to adjust status. *Attorney's brief*. On June 25, 2002 the applicant and her child were scheduled to have a second interview at the District Office in Boston, Massachusetts. *Attorney's brief*. The District Office did not have the applicant's file, but conducted the interview for the applicant's child. *Attorney's brief*. On January 17, 2003 the applicant went to the District Office to renew her employment authorization and was apprehended and served with a Notice of Intent to Reinstate a Prior Order. *Form I-871, Notice of Intent/Decision to Reinstate Prior Order*. The applicant was placed in detention. *Attorney's brief*. Counsel for the applicant filed a habeas and on May 9, 2003, the United States District Court, District of Massachusetts ordered the applicant released from custody. *Memorandum from William G. Young, Chief Judge, United States District Court, District of Massachusetts*, dated May 9, 2003. The United States Court of Appeals, First Circuit also ruled that the U.S. government was not entitled to reinstate the applicant's previous order of deportation. *Arevalo v. Ashcroft*, 344 F.3d 1 (1<sup>st</sup> Cir. 2003). The applicant again filed a *Form I-485*. *Form I-485*, dated April 19, 2004, originally filed on May 20, 2004 and receipted on June 29, 2004. The applicant was interviewed on March 24, 2005. On June 5, 2004 the applicant married her current spouse, a man who, on June 17, 2004, adjusted his status to that of lawful permanent resident. *Marriage certificate; Lawful permanent resident card for the applicant's spouse*. On March 1, 2006 the Director of the California Service Center found the applicant inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the "Act") for failure to disclose that she had previously been deported during one of her adjustment of status interviews. *Decision of the Director*, dated March 1, 2006. The Director denied the *Form I-601*, and on March 31, 2006 the applicant filed a *Form I-290B, Notice of Appeal*.

The AAO notes that the record includes the Form I-485 filed by the applicant on March 11, 1996 in which she failed to disclose her previous deportation. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or the applicant's children would experience upon removal is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's lawful permanent resident spouse or the applicant's naturalized United States citizen father if the applicant is removed. The AAO notes that the applicant states that her mother is a lawful permanent resident (Form I-601), however, the record fails to include a photocopy of the applicant's mother's lawful permanent residency card or any other supporting documentation that proves the status of the applicant's mother. As such, the AAO will only conduct an extreme hardship analysis for the applicant's spouse and father. If 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's lawful permanent resident spouse or U.S. citizen father must be established in the event that they reside in Guatemala or the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Guatemala, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse is a citizen of Guatemala and his parents, two children from a previous relationship, and one of his siblings reside in Guatemala. *Attorney's brief*. According to counsel, the standard of living for the applicant's spouse and his family would substantially decrease if they were to relocate to Guatemala. *Id.* Guatemala is a country that suffers from extreme poverty, violence, and lack of opportunity. *Id.* While the AAO acknowledges counsel's assertions, it notes that the record fails to include any documentary evidence, such as published country conditions reports, to support such assertions. 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 Obaighbena*, 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). There is nothing in the record to document that the applicant and her spouse would be unable to contribute to their family's financial well-being from a place

other than the United States. The record also reflects that the applicant's spouse has suffered from unusual headaches and painful joints. *Medical records, Primary Care Centers of New England*, dated October 29, 2003. A chest x-ray revealed no active disease. *Medical records, Memorial Hospital of Rhode Island*, dated January 19, 2006. An abdominal and pelvic CT Scan revealed a tiny left renal cyst, a small calcified granuloma at the left lung base, and no acute intra-abdominal abnormalities. *Medical records, Memorial Hospital of Rhode Island*, dated March 17, 2005. The applicant's spouse had a slightly abnormal stress test. *Medical records, Memorial Hospital of Rhode Island*, dated October 1, 2004. Although counsel asserts that the applicant's spouse suffers from ulcers (*See attorney's brief*), an endoscopy report states that the entire stomach was well seen and appeared normal. *Medical records, Memorial Hospital of Rhode Island*, dated October 21, 2004. While the AAO acknowledges the applicant's history of health issues, it notes that none of his conditions are demonstrated as impacting in his ability to meet his daily responsibilities and there is nothing in the record to demonstrate that he would be unable to receive adequate care in Guatemala. Counsel asserts that the children of the applicant's spouse would not have the same educational opportunities in Guatemala, and that they would most likely have no choice but to work at an early age instead of pursuing an education. *Attorney's brief*. Counsel further states that the applicant's spouse would be affected indirectly by his children's efforts to adapt and assimilate to a completely new environment. *Id.* The applicant's spouse would suffer immensely if he were forced to uproot his children and relocate them to Guatemala at this crucial stage when they have their whole lives and a wealth of opportunities ahead of them. *Id.* As previously noted, the applicant's children are not qualifying relatives in this case and hardship to the applicant's children is considered only to the extent that it affects the applicant's spouse. Although counsel asserts that the applicant's spouse would suffer immensely if his children relocated to Guatemala, counsel fails to specify or document how their relocation would impact the applicant's spouse. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Guatemala.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse has lived in the United States for over 18 years and has two biological children, one stepchild, and one brother who live in the United States. *Attorney's brief*. According to counsel, remaining in the United States to work full-time and raise his children without the assistance of the applicant would be an extremely stressful situation. *Id.* Without the applicant's additional income and her assistance in raising their children and maintaining their home, the applicant's spouse would be subjected to an unbelievable amount of pressure. *Id.* While the AAO acknowledges these assertions, it notes that the record fails to establish that other family members such as the applicant's parents, could not assist with some caretaking responsibilities to reduce the burden on the applicant's spouse. Furthermore, the record fails to document that the applicant would be unable to financially assist her family from Guatemala. The applicant's spouse states that he and the applicant are raising their children together like a family and his children rely on the applicant for emotional and financial support. Statement from the applicant's spouse, dated January 28, 2003. Counsel notes that if the applicant were not present at church functions and other family-oriented activities, it would have a devastating emotional and psychological impact upon the applicant's spouse and his children. *Attorney's brief*.

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. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

If the applicant's father travels with the applicant to Guatemala, the applicant needs to establish that her father would suffer extreme hardship. The applicant's father is a native of Guatemala. Form G-325A, Biographic Information sheet, for the applicant's father. The entire family of the applicant's father is in the United States. *Statement from the applicant's father*, dated March 24, 2005. The record does not address how the applicant's father would be affected if he relocated to Guatemala. The record does not document any significant health condition, physical or psychological, that would affect the applicant's father if he were to live in Guatemala. The AAO notes that the record includes an employment letter for the applicant's father specifying that he earns \$14.29 per hour. *Employment letter from Pete Perez, Vice-President of Operations, Broadway Famous Party Rentals*, dated January 27, 2004. There is nothing in the record to indicate that the applicant's father would be unable to earn a salary in Guatemala. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Guatemala.

If the applicant's father resides in the United States, the applicant needs to establish that her father would suffer extreme hardship. As previously noted, the entire family of the applicant's father is in the United States. *Statement from the applicant's father*, dated March 24, 2005. When the applicant's daughter was placed into detention in the United States, he and the applicant's mother moved to Massachusetts to assist the applicant's spouse in taking care of their grandchildren. *Statement from the applicant's father*, dated March 25, 2005. With regard to that period of time, the applicant's father stated that he experienced the extreme hardship of the situation and can say first hand that his grandchildren will suffer an extreme hardship if the applicant's application is not approved. *Id.* As noted previously, the applicant's children are not qualifying relatives for purposes of this case. While the applicant's father notes that he experienced difficulties when the applicant was separated from her children, he does not specify how he was directly affected. Furthermore, the record does not address how the applicant's father would be impacted if he remained in the United States while the applicant is in Guatemala.

*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 AAO recognizes that the applicant's father will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's father would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in the United States.

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(a)(6)(C) 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.