U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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MAR 0 3 2005

[redacted]

FILE: [redacted] Office: PROVIDENCE, RHODE ISLAND Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Providence, Rhode Island 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 who was found to be inadmissible to the United States (U.S.) under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation by untruthfully representing herself as married in order to obtain a U.S. visa. The applicant subsequently married to a U.S. citizen and became the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel states that the applicant's husband will suffer extreme hardship if the applicant is removed to Colombia, as he will be unable to accompany her to that country, and, in her absence, he will suffer emotional harm. On page 3 of counsel's brief on appeal, counsel erroneously states that the ten-year foreign residency requirement found in §202(a)(9)(B)(i)(II) [sic] applies to the applicant; it is noted, however, that the applicant was found inadmissible under § 212(a)(6)(C)(i) of the Act, and the waiver for this section contains no provision for allowing the alien to apply for admission to the United States at a future time.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 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. 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 the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, she must demonstrate extreme hardship to her U.S. citizen spouse. It is noted that Congress specifically did not include

hardship to an alien herself or to her children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's lawful permanent resident child will therefore not be considered in this decision.

The Board of Immigration Appeals ("Board") outlined in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) the following factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

> The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

Counsel asserts that, due to weak economic conditions in Colombia, if the applicant's husband accompanies her to that country, he will be unable to support his four children. The applicant's husband shares custody of his children with his ex-wife, and he pays child support. He cannot take his children to Colombia. The record includes a copy of the U.S. Department of State Colombia Country Report on Human Rights Practices for the year 2000, which reflects the existence of political and societal problems in Colombia. The report does not contain information that indicates that the applicant's husband would not be permitted to work or would be unable to find employment in Colombia, however. Nevertheless, the AAO acknowledges that, should the applicant's husband accompany the applicant to Colombia, the difficulties presented in caring and providing for his children could amount to extreme hardship for the applicant's husband.

Counsel also contends that the applicant's husband would suffer emotional hardship if he remains in the U.S. and his wife returns to Colombia. Counsel maintains that the applicant's marriage will disintegrate, and his suffering will be beyond that which is normal in similar circumstances. The record does not substantiate this claim. In noting that family members who are separated from their loved ones normally undergo suffering, the AAO does not imply that their suffering is taken lightly. It is acknowledged that the changes and adjustments involved in the removal of a family member usually cause stress and anxiety. In order to qualify for the waiver, however, the applicant must show that her situation presents more difficulties and more suffering to her husband than other spouses in similar situations experience.

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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. 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 § 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.