U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: CLEVELAND, OH Date: MAY 24 2006

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 District Director, Cleveland, OH, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador 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). The applicant is the spouse of a U.S. Citizen and is eligible to file 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 and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director,* dated September 11, 2004.

On appeal, counsel states that she is submitting more evidence to establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. *Counsel's Appeals Brief,* dated October 11, 2004.

The record includes but is not limited to: an affidavit from the applicant's spouse, a letter from the spouse's doctor, a letter from the applicant's child's doctor, the birth certificate of the applicant's child, a letter from the applicant's doctor, an article about health care in El Salvador, a psychological report from Dr. Gary Echt, an article about the economy in El Salvador, the 2003 State Department Human Rights Report for El Salvador, a Human Rights Watch report on El Salvador, an article entitled, " El Salvador: Government Ignores Widespread Labor Abuse" , an article about controlling crime in El Salvador, a country report entitled, " El Salvador: A Violent History," a 2004 consular information sheet from the State Department on El Salvador.

The record reflects that the applicant entered the United States on March 11, 2001 as a B-2 Visitor and was given permission to lawfully stay in the United States until September 10, 2001. *See Form I-94.* The applicant's visitor visa was issued on January 8, 1999 and the applicant had been entering and departing the United States in accordance with this visa to spend time with her future spouse. In February 2001 during a visit to El Salvador the applicant's current spouse proposed and the couple became engaged. As stated above, the applicant then entered the United States in March 2001 on her visitor's visa and was married to her U.S. citizen fiancée a month later on April 6, 2001. Therefore, the district director asserted that when the applicant entered the United States in March 2001 she misrepresented herself as a visitor when she was intending to immigrate by marrying a U.S citizen.

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 Department of State Foreign Affairs Manual states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." *Id.* at § 40.63 N4.7-1(3).

Under this rule, "when violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility." *Id.* at § 40.63 N4.7-4. In this case, the applicant married only 30 days after entry and therefore is ineligible for admission based on section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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 the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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 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. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of the departure of the applicant from the United States. The applicant and her spouse have one child and the applicant's spouse sees a doctor on a regular basis for high cholesterol. The applicant's spouse submitted a psychological evaluation from [redacted] who states that the applicant has been suffering from night sweats, loss of concentration, anxiety, nervousness and loss of short-term memory. He states that the applicant's spouse can no longer concentrate at work. [redacted] diagnosed the applicant's spouse with a Single Episode Depressive Disorder and states that if his wife is deported there is a high likelihood that this problem could turn into a chronic condition. The doctor suggests that the spouse continue individual counseling and if the applicant is removed from the United States he should seek psychiatric care to treat the symptoms of his depression. The AAO finds that the applicant's spouse's psychological evaluation establishes that if the applicant is removed from the United States the spouse's mental health situation will deteriorate. The applicant's inadmissibility and resulting depression is affecting his employment and everyday functions. Therefore, the applicant has established that her removal from the United States would cause extreme hardship to her U.S. citizen spouse.

The applicant must also establish that her spouse will suffer extreme hardship as a result of moving to El Salvador with the applicant. Counsel asserts that the applicant's spouse's entire family resides in the United States and he does not want to be separated from them. The applicant's spouse's family came to the United States as Russian Jewish immigrants fleeing persecution. He sees a doctor on a regular basis for high cholesterol and will not be able to receive adequate medical attention in El Salvador. Counsel also states that the applicant's spouse has a good job in the United States, he does not speak Spanish and due to the extreme poverty in El Salvador it would be extremely hard for him to find employment. Lastly, counsel asserts that the applicant's spouse fears for his and his daughter's safety in El Salvador. He states that many white Americans are kidnapped in El Salvador for ransom. In support of these assertions counsel submitted eight country condition reports. Because the applicant's spouse's employment, health and safety would be jeopardized by relocating to El Salvador he has established that he would suffer extreme hardship as a result of relocation.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's spouse, the applicant's U.S. citizen child, and the absence of any criminal record. The unfavorable factor in this matter is the applicant's misrepresentation to officials of the U.S. Government that she was coming to the United States as a visitor when in fact she was intending to immigrate. The AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.