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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES (SANTA ANA) Date: NOV 14 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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 District Director, Los Angeles, California denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of El Salvador who entered the United States in 1995, using a fake green card and applied for adjustment of status, on March 14, 2001. The applicant was found to be inadmissible 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 seeking to procure admission into the United States by fraud or willful misrepresentation. In order to remain in the United States with his U.S. citizen (USC) spouse, [redacted] (Mrs. [redacted], the applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record reflects that Mr. [redacted] used a fraudulent green card to enter the United States in 1995. As a result of this misrepresentation, the District Director found the applicant to be inadmissible to the United States. *District Director's Decision,* dated December 27, 2004. The District Director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal counsel submits a brief and additional documentation. The record consists of the following documents: several work verification letters for Mr. short statement from Mrs. [redacted] dated February 12, 2002; Mrs. [redacted] naturalization certificate, and a preschool assessment of Mrs. [redacted] USC son, Jacob. The AAO reviewed the record in its entirety before reaching its 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) 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 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 applicant has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable 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).

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).

Counsel asserts that Mrs. will experience extreme hardship if Mr. [redacted] is compelled to depart the United States. *Brief at 4.* Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings. Hardship the applicant's children experience is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant's USC wife.

Counsel asserts that Mr. [redacted] son suffers from a learning disability and could not receive the special education that he receives here in the United States if he relocated to El Salvador. Counsel asserts that even if it were available in El Salvador, it would be prohibitively expensive for the Bolanos family. First, the Act states that, for a waiver to be granted, the applicant must establish that denial of the application would result in extreme hardship to his USC spouse. Hardship to his child cannot be considered except in relation to how it would affect Mrs. [redacted] The documentation submitted relates to the expressive and receptive language delays of Mr. [redacted]' son. No documentation, however, was submitted to explain the connection between the denial of her husband's waiver application and her son's learning disability, and how this would result in extreme hardship to her. The only hardship statement from Mrs. [redacted] consisted of a one paragraph statement, dated February 12, 2002, where she stated generally that she felt protected by her husband and that she and her son were "dependent on my husband and it would be an extreme hardship to live without him."

Counsel asserts that El Salvador has endured years of civil strife and is considered a highly undesirable place to live due to its social, economic and political conditions. While existing and political and economic conditions in El Salvador are considerations in determining extreme hardship, counsel did not submit any documentation regarding country conditions in El Salvador and how those conditions would affect Mrs. [redacted]

Counsel asserts that if Mr. [redacted] went to live in El Salvador and Mrs. [redacted] remained in the United States without him, they would rarely see each other because of the distance between the two countries and because of the expense of airfare. Counsel, however, submitted no documentation to support this assertion or objective documentation of the psychological, financial, or emotional hardship Mrs. [redacted] ould suffer if separated from her husband.

Other than a brief statement from the applicant's wife, in which she notes her love for and attachment to her husband, (*See Mrs.* [redacted], no objective evidence was submitted to supplement Mrs. [redacted] claim of extreme emotional hardship. Although it is clear that his wife would suffer emotionally, if

he returned to El Salvador and she remained here, or if she left the United States to be with him, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on Mrs. [redacted] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mrs. [redacted] faces extreme hardship if Mr. [redacted] refused admission to the United States. 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) (upholding the BIA's decision in a case which addressed, *inter alia,* claims of emotional and financial hardship that Mr. [redacted] deportation would cause to his spouse and children). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra,* at 468.

In this case, although the applicant's qualifying relative will endure hardship if she remains in the United States separated from the applicant, or if she joins him in El Salvador or Nicaragua and is separated from her family and friends in the United States, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.