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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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AUG 12 2009

FILE: [redacted] Office: BALTIMORE, MD Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador 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 married to a naturalized United States citizen and 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.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated October 24, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred and/or abused its discretion in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B and attached statement.*

In support of the waiver, the record includes, but is not limited to, psychological evaluations of the applicant's spouse; a police clearance letter for the applicant; employment letters for the applicant and her spouse; tax returns for the applicant and her spouse; W-2 Forms for the applicant and her spouse; statements from friends; a health insurance card for the applicant; bank statements; credit card statements; a car insurance policy; a lease agreement; and a cable bill. 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) 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 record reflects that the applicant provided a false December 15, 2000 date of entry to the United States on her Form I-821, Application for Temporary Protected Status. *Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-821, Application for Temporary Protected Status.* By using this false date of entry, the applicant qualified for a benefit for which she was not otherwise eligible had she used her true date of entry to the United States. ***See I-94,*** *Arrival/Departure Information.* The applicant is thus inadmissible to the United States under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. 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 spouse must be established whether he resides in El Salvador or the United States, as he is 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 joins the applicant in El Salvador, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of the Dominican Republic. *Naturalization certificate.* His parents continue to live in the Dominican Republic. *Form G-325A, Biographic Information, for the applicant's spouse.* Although the record does not address how the applicant's spouse would be affected if he were to reside in El Salvador, the AAO notes that El Salvador is designated for Temporary Protected Status (TPS) through September 9, 2010. Under the TPS program, citizens of El Salvador are allowed to remain in the United States temporarily due to the substantial disruption of living conditions there created by prior natural disasters and the inability of El Salvador to handle the return of its nationals. As such, requiring the applicant's U.S. citizen spouse to relocate to El Salvador in its current state would constitute extreme hardship.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. Although the record does not state how long the applicant's spouse has resided in the United States, the AAO notes that he has been a naturalized U.S. citizen since 1995. *Naturalization certificate*. According to the first of two evaluations of the applicant's spouse performed by a licensed psychologist, the applicant is her spouse's only source of social support, as he does not have any family of his own in the greater Washington, D.C. metropolitan area. *Psychological evaluation from* [redacted] dated April 28, 2006. During his initial interview, the applicant's spouse stated that being separated from the applicant would knock him completely down, and that he would be very, very depressed. *Id.* The psychologist also found that separation from the applicant would cause the applicant's spouse emotional devastation. *Id.* In a second evaluation, conducted eight months later, the same psychologist found the applicant's spouse to be suffering from depression and anxiety as a result of his fear of losing the applicant. *Psychological evaluation from* [redacted], dated November 18, 2006. She observed that the applicant's spouse had presented consistently across two evaluations over an eight month period, and that his mental status had deteriorated in that he appeared more anxious and depressed. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO does not find the submitted evaluations to distinguish the applicant's spouse from other individuals who also suffer at the thought of losing their husbands or wives. Neither evaluation offers a diagnosis of the applicant's mental/emotional health that would demonstrate his hardship is beyond that commonly experienced as a result of removal or exclusion. The psychologist also notes that the applicant's spouse's diabetes would be compromised should he be made to confront the trauma of the applicant's deportation, as diabetes is a deteriorating condition that is easily exacerbated by stress. *Id.* While the AAO acknowledges this assertion, the record fails to include documentation, such as medical records, that the applicant's spouse suffers from diabetes. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). 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.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(6)(C) of the Act. 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.