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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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[redacted]

FILE: [redacted] Office: ROME Date: JUL 07 2009

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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native of Colombia and a citizen of Colombia and Spain 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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse, [redacted]

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 Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant has not committed fraud or made material misrepresentations, and therefore is not inadmissible. Counsel contends that nevertheless, the applicant's spouse has established that he will suffer extreme hardship if the applicant is refused admission to the United States. Counsel indicates that when all relevant factors are taken into consideration - including the applicant's spouse's family ties within the United States, his lack of family ties outside the United States, his inability to speak Spanish, his profession in the United States, his high blood pressure and depression, his age, and his skills and expertise - the applicant's waiver application should be granted. 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 District Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act because internal records reflect that in 1993 the applicant applied for a non-immigrant visa at the U.S. Embassy in Bogota, Colombia and her application was denied because she presented false marriage and employment documents to demonstrate her ties to Colombia.

On appeal, counsel asserts that during the applicant's recent immigrant visa interview, she explained to the consular officer that she had never made an application for a visa at the U.S. Consulate in Bogota in 1993. Counsel states that the applicant explained she had lost her personal documents, including her passport in 1993, and it was possible that the individual who stole her documents had appeared at the consulate using her passport with a photo substitution. Counsel contends that the applicant had not appeared at the consulate in 1993 and had not submitted fraudulent documents to the consulate. Counsel states that the applicant had applied only once for a tourist visa, in 1996 or 1997, which was denied for no reason.

The AAO notes that the applicant has not presented evidence that she reported her lost and/or stolen personal documents to the authorities, any evidence of an investigation into the incident, or any evidence of her attempt to replace these documents. The record reflects a memorandum from the Vice Consul in Madrid, Spain, dated July 26, 2006, which addresses the applicant's inadmissibility. The memorandum states that the signatures on the applicant's underlying immigrant visa application and the nonimmigrant visa application from 1993 are a good match. It also states that the photographs submitted with the nonimmigrant visa application from 1993 appear to be the applicant. Further, the memorandum notes that the applicant was interviewed by fraud officials when she applied for her nonimmigrant visa in 1993, and admitted to filing false documentation. Accordingly, the AAO concurs with the District Director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for presenting false documentation in an attempt to establish her eligibility for a nonimmigrant visa.

The AAO notes further that the record reflects that subsequent to the District Director's decision, on October 5, 2008, the applicant applied for admission to the United States at the Champlain, New York port-of-entry. The applicant presented herself as a citizen of Spain and furnished her Spanish passport. The applicant was detained and testified in a sworn statement before a U.S. Customs and Border Protection officer. The sworn testimony reflects that the applicant failed to disclose on her arrival/departure record for the visa waiver program (Form I-94W) that she was previously denied a U.S. visa. The record reflects that the applicant was denied a non-immigrant visa in 1993 and 1998 as well as the immigrant visa for which she has filed a waiver application. The AAO finds this misrepresentation to be material as it relates to her eligibility for admission to the United States. Therefore, the AAO finds the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for this additional reason.[1]

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [redacted], a U.S. citizen, on April 10, 2005. The applicant's spouse is a qualifying family member for section 212(i) of the Act extreme hardship purposes.

The applicant's spouse asserts in his affidavit, dated December 18, 2006, that he is finding it increasingly difficult to live without the applicant. He notes that he can only see the applicant six weeks a year. He contends that the separation is causing him to feel depressed, and it is contributing to his high blood pressure, for which he takes medication. The AAO notes that the applicant's spouse made similar assertions in the affidavit he initially filed with the waiver application, dated June 23, 2006. The applicant's spouse presented a letter from [redacted], of the Family MedCenters of Aiken, located in Aiken, South Carolina. [redacted] letter states that the applicant's spouse is suffering from depression. The letter indicates that the applicant's spouse's depression is due to his separation from the applicant.

The AAO finds that the record fails to reflect any type of assessment or evaluation of the applicant's mental health by a licensed mental health professional. There is no documentation in the record related to the applicant's diagnosis, prognosis, and treatment plan for depression. Further, there is no documentation in the record that would serve to link the applicant's depression to his separation from the applicant. The record does not reflect that the diagnosis of depression has been made with the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] finding speculative. Moreover, the record does not contain any medical records related to the applicant's spouse's treatment for high blood pressure. For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

The applicant asserts in his affidavit, dated December 18, 2006, that he would not be able to work in the same industry he works in now if he were forced to move to Spain or Colombia. He states that he is a nuclear engineer with a Ph.D. and PE in nuclear engineering. He notes that he has 30 years of experience in the nuclear engineering field with working at nuclear weapons facilities. He explains that he is a criticality safety engineer and evaluates fissile processes to ensure that a nuclear criticality accident does not occur. He indicates that his career would be terminated if he resided in another country. He notes that he does not speak Spanish well enough to work in his area of expertise, and he would have to give up his career. He states that he would then not be able to support himself, the applicant, and his children. The applicant's spouse made similar assertions in the affidavit he initially filed with the waiver application, dated June 23, 2006. In that affidavit, the applicant's spouse also noted that at his age, he would find it difficult or impossible to find employment in Spain or Colombia.

The AAO understands that the refusal of the applicant's admission may cause economic detriment to her spouse should he decide to accompany her to Spain or Colombia. However, his inability to find employment in his industry or a reduction in standard of living does not necessarily result in extreme hardship. The applicant's spouse, who is 55 years old, has not discussed the type of employment opportunities that would be available in Spain or Colombia to someone of his age with his experience,

education, and linguistic skills. Further, the applicant's G-325A, Biographic Information Form, reflects that she is employed, indicating her capability to offer financial support to her spouse. The AAO notes that U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship)*; Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

The applicant's spouse asserts in his affidavit, dated December 18, 2006, that he was born in the United States and his entire family resides in the United States. He states that all his family members are U.S. citizens, including his two brothers, 74 year old mother, and two children. He states that if he moved to Spain or Colombia, he would not be able to see his children or mother. He notes that he financially supports his child, [redacted] who is 24 years old and in school. He further notes that he his son, [redacted] who is 28 years old, lives at his home free of charge.

The AAO finds the above assertions to be lacking specific detail on the type of hardship the applicant's spouse would suffer as a result of family separation. There is no indication of whether the applicant's adult children are capable of supporting themselves. Nor is there any discussion of whether they would be able to visit the applicant in Spain or Colombia. Further, the applicant's spouse has not discussed how frequently he sees his siblings and mother, where they reside, and whether he provides any type of financial support to them. Finally, the applicant's spouse failed to present any evidence of his ties to his community. As previously stated, while the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission to 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)(9)(B)(v) 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.