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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: OCT 26 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application. On June 5, 2007, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reconsider the denial of the appeal. The motion will be granted. The previous decision shall be withdrawn and the application will be approved.

The applicant, [redacted] 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), for willfully misrepresenting a material fact (her true identity) in order to gain entry into the United States. The applicant is the wife of a naturalized citizen, [redacted]. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship to her qualifying relative, her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated December 28, 2004. Counsel for the applicant submitted an appeal, which the AAO dismissed finding the record failed to establish extreme hardship to the applicant's husband (her qualifying relative) if the waiver application were denied.

On motion, counsel submits a U.S. Department of State Background Note on El Salvador dated January 2007, letters by friends and family members, a document about urinary reflux, a letter by Brockton Avenue Elementary School, and other documentation.

The AAO notes that it has jurisdiction over the instant motion as the AAO rendered the last decision in this case. *See*, 8 C.F.R. § 103.5.

The applicant seeks a waiver of inadmissibility. 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 to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is her husband. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [redacted]. 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to [redacted]

As a preliminary matter, in its June 5, 2007 decision the AAO concluded that the applicant established extreme hardship to her husband if he were to remain in the United States without her; however, the AAO found that the record failed to establish extreme hardship to the applicant's spouse if he were to join her to live in El Salvador. The AAO will therefore address in this decision whether or not the applicant has established extreme hardship to her husband if he were to join her to live in El Salvador. It is noted that a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel asserts on motion that [redacted] is concerned about finding employment in El Salvador or having a reduced income, and being able to afford medical care for his 11-year-old daughter, who had open heart surgery when she was one year old, and was diagnosed with allergic rhinitis, sinustitis, otis media, tinea unguum, and psoriasis. Counsel states that [redacted] would experience culture shock in El Salvador as he does not speak Spanish and has lived and worked in the United States for 18 years. She states that [redacted] is concerned about having his daughter live in El Salvador, a country that is foreign to her, and is concerned about the education and healthcare that she would receive.

Although hardship to an applicant's child is not a consideration under the statute, hardship to an applicant's U.S. citizen child will be considered to the extent that it results in hardship to a qualifying relative.

The AAO notes that El Salvador was designated for Temporary Protected Status (TPS) in March 2001 due to the devastation caused by a series of severe earthquakes that occurred in January and February of 2001.[1] The TPS designation for El Salvador has been extended through September 9,

[1] Federal Register: October 1, 2008 (Volume 73, Number 191).

2010 because: "there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001 . . . ." [2] According to the Federal Register "[t]ransportation, housing, education, and health sectors are still suffering from the 2001 earthquakes . . . ."[3]

In view of El Salvador's TPS designation and [redacted] concern about employment, and the welfare of his daughter and the cultural adjustment that he and she will face in El Salvador, the AAO finds that the applicant has established that her husband would experience extreme hardship if he joined her to live in El Salvador.

Based on the record, the factors presented do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The favorable factors in this matter are the extreme hardship to the applicant's spouse and child, her employment history, and the letters commending her character. The AAO notes that the record does not indicate that the applicant has any criminal convictions. The unfavorable factors in this matter are the applicant's misrepresentation to gain entry into the United States, and periods of unauthorized presence. The AAO finds that the hardship imposed on the applicant's spouse as a result of her 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. The applicant has met that burden. Accordingly, the application will be approved.

ORDER: The decision of the AAO dated June 5, 2007, is withdrawn. The application is approved.

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[2] *Id.*

[3] *Id.*