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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: SEP 25 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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The applicant is married to a 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 reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated May 7, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on May 12, 2004; a letter from [redacted] documentation indicating [redacted] was a member of the Marine Corps; a copy of the U.S. Department of State Travel Warning for Colombia and the 2005 Country Reports on Human Rights Practices for Colombia; a letter from [redacted] physician; a letter from a psychologist and psychological evaluations for the applicant and [redacted]; financial and tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The record shows that the applicant entered the United States using a visitor's visa in October 2001. In December 2001, the applicant submitted an Application to Extend/Change

Nonimmigrant Status (Form I-539) based on her alleged marriage to an individual with an H1B visa, which was approved in March 2002. However, the district director found, and counsel does not contest, that the applicant was not married at that time. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud of willfully misrepresenting a material fact to obtain an immigration benefit.

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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, states that he met the applicant in June 2003 after he spent almost five years overseas in the Marine Corps. He states he started working at the police department in October 2003 and that two months later, the applicant shattered her ankle in a car accident. He states they bought a house together, got married, and traveled to Colombia after the applicant was granted advance parole.[1] [redacted] states that the applicant "inadvertently lied" on her December 2001 application to adjust her status. He contends that because of the unbelievable amount of stress given his wife's immigration status, they both began regular visits with a psychologist and have been prescribed medication. [redacted] states that he continued his career as a law enforcement officer and was becoming a field training officer, but that he voluntarily gave up the position because he was unable to "give it 100% mentally due to the stress of [his] current situation." In addition, [redacted] states he cannot move to Colombia to be with his wife because he has a limited number of vacation days, his state pension would be taken away if he moved to Colombia, he speaks very little Spanish, and he is very close with his family. He further states he fears he would be at an "elevated risk" of violence or kidnapping in Colombia. Furthermore, Mr.

[1] The AAO notes that the applicant's departure to Columbia also renders her inadmissible under section 212(a)(9)(B) of the Act for unlawful presence from April 19, 2002, the date on which her visa expired, until October 25, 2004, the date her initial Form I-485 was filed, a period in excess of one year. As the requirements for a waiver under section 212(a)(9)(B)(v) are the same as those for a waiver under section 212(i) of the Act, the AAO will make only one hardship evaluation.

[redacted] states the applicant has become the primary caretaker of his 89-year old grandfather when [redacted] father is out of town for business. [redacted] contends he is unable to care for his grandfather because he often works 16 to 20 hour days due to manpower shortages. Moreover, Mr. [redacted] states he and the applicant have suffered hardship because they have not started a family yet due to their uncertain future. He states he loves his wife very much, cannot live his life without her, and states that his wedding band is her name tattooed on his left ring finger. *Letter from* [redacted] dated May 15, 2007.

A letter from [redacted] doctor states that on May 9, 2007, [redacted] requested an "emergency appointment" for anxiety, stress, and insomnia. [redacted] doctor states that Mr. [redacted] has had no prior complaints of stress or anxiety and has no history of treatment with anti-anxiety medication. *Letter from* [redacted] dated June 15, 2007.

A psychological evaluation in the record states that [redacted] was evaluated on August 30, 2006, after being referred by his attorney. The psychologist states [redacted] "reported no change in his appetite, overall ability to concentrate, interest in activities, guilt or energy level." The psychologist concludes that [redacted] "is absent of chronic psychological problems[, and] appears to be emotionally stable with an exceptional ability to withstand stress." The psychologist further concludes that "it does not appear that [redacted] is suffering a great deal of turmoil. He does not appear to be feeling clinically depressed or anxious. . . . [I]t does not appear that [redacted] is experiencing clinically significant levels of anxiety at this time." *Psychological Evaluation by* [redacted] dated August 30, 2006.

A letter from the same psychologist was submitted on appeal to the AAO. In this more recent letter, dated June 1, 2007, the psychologist states that immediately upon learning that his wife's waiver application was denied, [redacted] requested an emergency appointment and contends that "[redacted] has been attending regularly scheduled therapy sessions due to his fear of [his wife's] possible deportation." The psychologist states that [redacted] will not be emotionally stable and will suffer severe emotional distress if his wife departs the United States. The psychologist contends [redacted] is having grave difficulty making sense of the legal system and that he reported that he and his wife are doing things the legal way, but that the system is not working for them. According to the psychologist, [redacted] reminded her that he served his country in the Marines and continues to uphold the law as a Broward County Deputy. The psychologist states that she fears [redacted] "emotional status will plummet further to a critical level if his wife were forced to leave the country." The psychologist concludes that [redacted] depression has significantly increased, is suffering a great deal of turmoil, and is clinically depressed and anxious. The psychologist diagnosed [redacted] with major depressive disorder. *Letter from* [redacted], dated June 1, 2007.

After a careful review of the record evidence, it is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if had to move to Colombia to be with his wife, he would suffer extreme hardship. The record contains ample evidence that the political situation in Colombia is precarious and the U.S. Department of State has warned U.S. citizens about the dangers of traveling to Colombia. *See, e.g., U.S. Department of State, Travel Warning, Colombia*, dated June 4, 2007. In addition, [redacted] would have to give up his job as a police officer and may not be able to find employment in Colombia, particularly considering he speaks very little Spanish. In addition, [redacted] is very close with his family, including his brothers, parents, and grandfather, all of whom live in the United States. The record therefore shows that if Mr. were to move to Colombia, he would experience hardship above and beyond what would normally be associated with deportation.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the couple's circumstances and recognizes Mr. service to this country, there is insufficient evidence that [redacted] emotional hardship rises to the level of extreme hardship. Regarding the psychological evaluation in the record, the psychologist concluded that [redacted] has an exceptional ability to withstand stress and was not clinically depressed or anxious at the time of the evaluation. *Psychological Evaluation by* [redacted] *supra.* With respect to the psychologist's subsequent letter, the AAO notes that the psychologist states that "[t]he purpose of [her] letter is to report [redacted] emotional status *related to the most recent legal determination of his wife,* [redacted]" *Letter from* [redacted] *supra* (emphasis added). The letter states that [redacted] contacted her for an "emergency appointment" immediately after learning that his wife's waiver application was denied. *Id.* Significantly, the psychologist's letter is dated June 1, 2007, three weeks after the applicant's waiver application was denied on May 7, 2007. Although the psychologist contends Mr. [redacted] "has been attending regularly scheduled therapy sessions," and [redacted] claims he "began regular visits to the psychologist," there is no elaboration regarding how often [redacted] attended counseling sessions with the psychologist during this three-week period. Thus, although [redacted] has met with the psychologist on at least two occasions, the record nonetheless fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Although it is understandable [redacted] experienced depression and anxiety immediately after learning his wife's waiver application was denied, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Rather, their situation, if remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See also Perez v. INS, supra* (holding that the common results of deportation are

insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

To the extent [redacted] contends that the applicant is his grandfather's primary caretaker when his father is out of town, there is insufficient record evidence showing this hardship rises to the level of extreme hardship. Aside from stating that it is "quite frequent" his father is out of town, Mr. [redacted] does not specify how often his father is away. In addition, [redacted] does not specify what type of care his grandfather requires and there is no letter from [redacted] father, grandfather, or any other family member in the record. Furthermore, [redacted]'s claim that he has suffered hardship because he and his wife have not yet started a family given their uncertain future does not rise to the level of extreme hardship. In addition, the AAO notes that although the record contains tax records and copies of bank statements, the applicant, who did not work while she was living in the United States, does not make a financial hardship claim. *Biographic Information (Form G-325A)*, signed by the applicant March 13, 2006 (indicating the applicant was a "housewife" from May 2004 to the present); *2005 U.S. Individual Income Tax Return* (indicating the applicant was "unemployed"); *2004 U.S. Individual Income Tax Return* (same).

Finally, the AAO notes that counsel's contention that the district director's decision does not follow the latest cases from the AAO, *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, is unpersuasive. 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. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In contrast to the case upon which counsel relies, in this case, there is no allegation of a family history of depression and the record does not contain a doctor's note for an antidepressant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility 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)(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.