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

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[redacted]

FILE: [redacted] Office: ROME Date: JUL 07 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT: Self-represented

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

The applicant is a native and citizen of Italy who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States with her spouse and children.

The acting 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. *Decision of the Acting District Director*, dated January 21, 2005.

The record shows that the applicant appeared at the U.S. Embassy in Rome, Italy, for an immigrant visa interview. The applicant testified that, on March 10, 1997, she was admitted to the United States under the Visa Waiver Pilot Program (VWPP) until June 9, 1997. The applicant made this entry into the United States after she had **been denied a fiancée visa as the fiancée of her current husband,** [redacted], who was at the time a lawful permanent resident of the United States. The applicant and [redacted] had made plans to marry on March 12, 1997. On March 12, 1997, the applicant married [redacted] in Fernandina, Florida. Shortly thereafter, the applicant retained an attorney to prepare and file an immigrant visa petition. There is no record that the attorney ever filed an immigrant visa petition or an application for adjustment of status on behalf of the applicant. On January 30, 2002, [redacted] became a naturalized U.S. citizen. On March 14, 2002, a Petition for Alien Relative (Form I-130) filed by [redacted] on behalf of the applicant was approved. The applicant remained in the United States until September 2002 when the whole family moved to Italy.

On May 24, 2004, [redacted] filed a second Form I-130 at the U.S. Embassy, Rome, Italy, on behalf of the applicant. On August 11, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant's spouse contends that he would suffer extreme hardship if the applicant were not granted a waiver. *See Affidavit,* dated February 9, 2005.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission

> within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.

> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

On appeal, the applicant's spouse asserts that it was not his intention to defraud the United States and was led to believe by his attorney that he was following the correct procedure to obtain legal status for the applicant.

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." *Id.* at § 40.63 N4.7-1(3). Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the record reflects that, at the time she last entered the United States, not only had the applicant been denied a fiancé visa, she intended

to remain in the United States. The applicant presented herself for admission as a visitor to the United States on March 10, 1997, at which time she was an intending immigrant that willfully misrepresented herself as a nonimmigrant. Moreover, the applicant married [redacted] and took up permanent residence only two-days after she entered the United States. The applicant is clearly inadmissible under section 212(a)(6)(C)(i) of the Act.

The acting district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. The applicant's spouse does not contest the acting district director's determination of inadmissibility.

Both a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect their father, the only qualifying relative.

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 at 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 alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. 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).

The record in the instant case reflects that the applicant has an eight-year old son and a six-year old son, who are both U.S. citizens by birth. The applicant's youngest son has been diagnosed with mastocytosys. The record reflects further that the applicant and [redacted] are in their 30's, and [redacted] does not have any health concerns.

[redacted] asserts that he would suffer extreme hardship if he were to return to the United States without the applicant. In his affidavits he states "separating my family would. and has caused excessive hardship to myself and my children . . . my youngest son [redacted] medical condition has worsened . . . Italian treatment is obviously not sufficient to aid my son here in Italy . . . [redacted] would suffer financial and emotional hardship due to the loss of his primary caregiver." [redacted] submitted a medical letter indicating that he is a patient of [redacted] and is "affected of sindrom [sic] depressive-ansios with insomnia." [redacted] submitted a medical letter indicating that his youngest son was treated by [redacted] for mastocytosys and had 43 lesions distributed over his body with one in his right eye.

The record contains no evidence in regard to [redacted] and the applicant's income while they resided in the United States or what would be the costs associated with such a household. The record, as it stands, does not support a finding of financial loss that would result in an extreme hardship to even when combined with the emotional hardship discussed below.

The medical report for [redacted] does not contain evidence that he has received psychological treatment or evaluation other than during the appointment used to write the medical letter. Therefore, the medical letter for [redacted] may be given little weight. Additionally, the AAO notes that the medical letter was submitted after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. The medical letter for [redacted] youngest son indicates that he suffers from mastocytosys. However, it does not indicate whether his condition has worsened or if he requires assistance with daily activities due to his disease. There is no evidence in the record, besides the medical letter, that [redacted] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [redacted] would essentially become a single parent and professional childcare may be expensive and not equate to the care of a mother, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

asserts that he would suffer extreme hardship if he remained in Italy with the applicant. As discussed above, the hardship to the applicant's U.S. citizen son will not be considered in this decision. In his affidavits he states "my youngest son [redacted] medical condition has worsened . . . Italian treatment is obviously not sufficient to aid my son here in Italy . . . just the thought of having to return to the United States without my wife, the mother of my children, has caused undue distress to me and my children. This distress has become so acute as to have started manifesting itself physically also severely impeding my ability to provide for my family here in Italy . . . at the time the initial application for a visa was submitted, I owned and operated a small clothing business in Italy, however economic conditions in the region forced me to close down the business and relocate my entire family of four into a one bedroom apartment . . . to date I have been unsuccessful in locating employment . . . [redacted] (his eldest son) is experiencing lingual difficulty in his education that is placing him at an unfair disadvantage . . . [redacted] is the primary means of support for this family and has been unable to secure gainful employment in Italy." [redacted] submitted a letter indicating that he presented himself to search for employment on September 2, 2004.

The record contains no evidence, besides his affidavits, that [redacted] no longer owns and operates a business. While the record contains a letter indicating [redacted] presented himself to search for

employment, there is no other evidence that [redacted] is currently unemployed. There is no evidence that the applicant is not employed or that [redacted] and the applicant do not earn sufficient income to support their family. As discussed above, the medical letter for [redacted] may be given little weight and the medical documentation submitted in regard to [redacted] youngest son does not indicate whether his condition has worsened, he requires assistance with daily activities due to his disease, or if he is unable to obtain sufficient medical assistance in Italy. There is no evidence in the record, besides [redacted] affidavit, that his eldest son is having learning difficulties in Italy for which he is unable to obtain sufficient assistance. As such, there is no evidence in the record that [redacted] and his children suffer from a physical or mental illness that would cause [redacted] to suffer hardship beyond that commonly suffered by spouses who accompany their alien spouses to a foreign country. The record also reflects that the applicant has family in Italy who may be able to provide financial and emotional assistance. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] would not experience extreme hardship if they returned to the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. 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. The point made in this and prior decisions on this matter is that 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) 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 an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.