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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

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MAY 05 2010

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse and child are U.S. citizens. The applicant 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 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 District Director*, at 3, dated June 30, 2000.

On appeal, counsel asserts that the applicant's spouse has medical problems and they would worsen if the appeal were to be denied. *Letter in Support of Appeal*, at 2, dated July 25, 2000.

The record includes, but is not limited to, counsel's letter, physicians' letters for the applicant's spouse; the applicant's and his spouse's statements; and statements from the applicant's spouse's family members and the applicant's brother. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented a fraudulent passport when seeking entry to the United States at the Los Angeles port of entry on November 19, 1990. Based on this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in El Salvador or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in El Salvador. The AAO notes that El Salvador is currently designated under the Temporary Protected Status (TPS) program due to the devastation caused by a series of severe earthquakes in 2001. 73 Fed. Reg. 57129 (Oct. 1, 2008) Under the TPS program, citizens of El Salvador are allowed to remain in the United States temporarily due to the inability of El Salvador to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen spouse to relocate to El Salvador in its current state would constitute extreme hardship.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse's physician states that the applicant's spouse was emotionally distraught and relayed to her a two to three month history of insomnia, anorexia with vomiting, anhedonia and suicidal ideation; she was started on an antidepressant and referred to the Neuropsychoatric Unit at UCLA; and her current medical condition would be exacerbated by separation from the applicant. *Letter from* [redacted] dated July 24, 2000. The applicant's spouse was diagnosed with Adjustment Disorder with Depressed Mood, which appears to be secondary to the possibility of the applicant leaving the country, she is being treated with Paxil for depression and Trazadone for sleep, and she will continue to be treated for her symptoms in the GOC Adult Psychiatric Clinic at the Neuropsychoatric Unit at the University of California, Los Angeles as she states that her family situation is worsening. *Letter from* [redacted] dated August 8, 2000. The record includes letters, all of which all appear to be from or around the year 2000, from the applicant's spouse, her family and her brother-in-law reflecting the hardships that she would encounter without the applicant.

The record also includes information from 2008 that reflects that the applicant has a protection order against him, which restrains him from making any communication with his spouse including, but not limited to, personal, written or telephone contact, or with her employers, employees or fellow workers or others with whom the communication would be likely to cause annoyance or alarm her; and the applicant is restrained from assaulting, threatening, abusing, harassing, following, interfering or stalking his spouse and/or child. The most recent evidence in the record rebuts the evidence of extreme hardship previously submitted by the applicant to establish that his spouse would suffer extreme hardship as a result of his inadmissibility. As such, the AAO finds that the applicant has failed to demonstrate that his spouse would experience extreme hardship if she remained in the United States without him.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra,* held further that the 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.

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 he merits a waiver as a matter of discretion.[1]

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.

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[1] The record reflects that the applicant was arrested on or around October 17, 2002 by the Hawthorne Police Department for Rape by Force/Fear/etc.(Section 261(a)(2) of the California Penal Code) and Sodomy in Concert w/Force (Section 286(d) of the California Penal Code); on or around May 13, 2006 by the Hawthorne Police Department for Inflicting Corporal Injury on Spouse/Cohabitant (Section 273.5 of the California Penal Code), and on or around June 2, 2007 by the Norwalk Sheriff's Office for DUI Alcohol/Drugs (Section 23152 of the California Vehicle Code). On October 6, 2009, the AAO requested documents that would clarify the facts behind these arrests and the dispositions of the cases, such as the arrest reports, indictments, judgments of conviction, jury instructions, signed guilty pleas or plea transcripts. The AAO did not receive a response. In the event that the applicant were to establish that his spouse would suffer extreme hardship, the AAO would need to know the facts behind the applicant's arrests and the dispositions of those cases before it could determine whether he merits a waiver as a matter of discretion.