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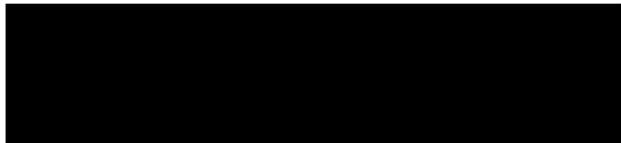
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 21 2007**

IN RE: Applicant: [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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 Bolivia 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 attempting to obtain a visa through fraud. The record indicates that the applicant is married to a lawful permanent resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident husband and son.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated June 22, 2006.

On appeal, the applicant, through counsel, states that the applicant's husband will suffer extreme hardship if the applicant is removed from the United States. *Brief attached to Form I-290B*, filed July 25, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and her husband, and a psychological evaluation on the applicant and her family by [REDACTED], dated July 14, 2006. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 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 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 AAO notes that the record contains several references to the hardship that the applicant's lawful permanent resident son would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant married [REDACTED] on July 28, 1990, in Bolivia. The applicant's husband entered the United States in 1993 and became a lawful permanent resident. On March 13, 1996, the applicant was issued a P3 nonimmigrant visa based on her fraudulent claim that she was a member of a dance group named "[REDACTED]". The record is unclear on when the applicant entered the United States or if she actually used the visa. The applicant claims to have entered sometime in 1996 without inspection. On April 7, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 22, 2005, the applicant filed a Form I-601. On June 22, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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, 565-66 (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 to a qualifying relative. 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.

Counsel asserts that the applicant's husband "will suffer emotionally, economically, and mentally if he either he [sic] were forced to be separated from [the applicant], and be left here to care for their 14 year old son, [REDACTED] by himself or leaving everything that they have built together." *Brief in Support of Appeal*, page 1, dated July 19, 2006. Counsel states the applicant's husband works long hours and "often he is required to travel outside the area...for weeks at a time for work. [The applicant] not only cares for their son, overseeing his school work, taking him to the doctors, attending school meetings, etc, but she also handles all their

household affairs.” *Id.* The applicant’s husband states he owns a small construction company specializing in carpentry. *Sworn Statement by* [REDACTED] dated July 12, 2006. The AAO notes that the applicant’s husband is an experienced carpenter, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Bolivia. [REDACTED] states the applicant’s husband “has a history that is consistent with AD/HD with comorbid recurrent depression.” *Report of Psychological Evaluation by* [REDACTED], page 6, dated July 14, 2006. [REDACTED] claims that if the applicant were removed from the United States, the applicant’s husband “would suffer devastating and irreparable emotional damage.” *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant’s husband and the psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant’s husband. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. The applicant’s husband states he “may not have any choice but to return [to Bolivia with the applicant]...[and he] could not imagine bring separated from [the applicant] for any length of time.” *Sworn Statement by* [REDACTED] *supra*. The AAO notes that the applicant’s husband is a native of Bolivia, who spent all his formative years in Bolivia, and he speaks Spanish. Additionally, the AAO notes that the applicant has not established that the applicant and her husband have no family in Bolivia. The AAO finds that the applicant has failed to establish extreme hardship to her lawful permanent resident husband if he accompanies her to Bolivia.

In addition, counsel does not establish extreme hardship to the applicant’s husband if he remains in the United States. As a lawful permanent resident, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO notes that the applicant and her husband were separated from 1993 until 1996, and it has not been demonstrated that the applicant’s husband could not get along without her. Counsel states that the applicant and her husband “have no real family members upon whom they can rely on to care for their lawful permanent resident son.” *Brief in Support of Appeal*, page 2, *supra*. The applicant’s husband states “[w]e do not have any other relatives here, except a sister-in-law...who is very involved in her own personal family matters as a single mother...to even consider asking her for help in caring for [his] son if [the applicant] were forced to return to Bolivia.” *Sworn Statement by* [REDACTED] *supra*. The AAO notes that the applicant’s son is 17 years old and is entering his last year of high school, and it has not been established that he needs someone to take care of him. The applicant’s husband states he relies on the applicant’s income to help with the household expenses. *Id.* The AAO notes that the applicant “graduated from high school[,]. . .has college education[,]. . .and is very knowledgeable,” and that it has not been established that the applicant will be unable to contribute to her husband’s financial wellbeing from a location outside of the United States. *See Report of Psychological Evaluation by* [REDACTED], page 3, *supra*. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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,

in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's lawful permanent resident husband will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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)(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.