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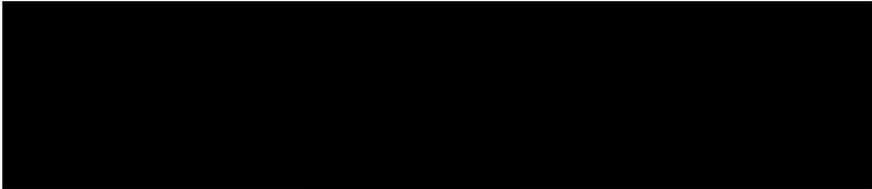
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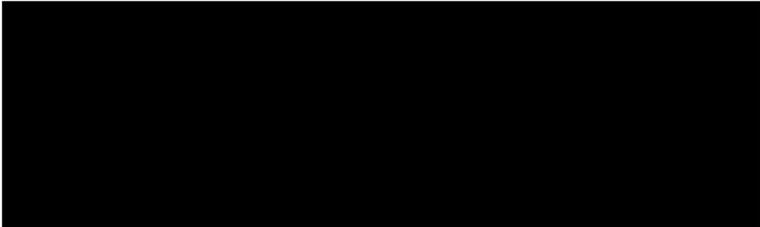
OCT 19 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



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 District Director, Panama, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed. The application will be denied.

The applicant () is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant is married to a naturalized citizen and the record reflects that she has two U.S. citizen daughters and a lawful permanent resident son. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated December 22, 2005.

The AAO notes that although not stated by the director, the applicant is inadmissible under 212(a)(6)(c) for misrepresentation. The AAO will first address this ground of inadmissibility.

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:

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.

The record reflects that the applicant entered the United States in 1986 using a visitor visa and remained in the country illegally until 1991, at which time she applied for asylum under the name . On April 27, 1997, the applicant attempted to enter the United States using a photo-substituted passport and a U.S. nonimmigrant visa under the name she gave her true name as and was ordered removed from the United States. On June 15, 1997, the applicant attempted to enter the United States with a photo-substituted passport and visa under the name and was ordered removed from the country. At her March 5, 2005 interview, the applicant failed to disclose her prior removals from the country. Based on documents in the record, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether a waiver of inadmissibility is warranted under section 212(i) of the Act.

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 his children will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant's wife. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 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 record reflects that the applicant has two U.S. citizen daughters who are now 15 and 14 years old. Her lawful permanent resident son, [REDACTED] is 10 years old.

The applicant's husband completed a 4-year plumbing apprenticeship program and was certified in medical gas installation. Letter from [REDACTED] President, *Comfort Systems USA*, dated February 15, 2006. He is presently employed as a plumber, earning \$55,000 a year. Letter from [REDACTED] *JCM Associates, Inc.*, dated February 15, 2006.

The letter in the record from the applicant's husband indicates that he misses his wife and the children need their mother.

The letter from the [REDACTED] the applicant's 15-year-old daughter, conveys that her family lives in a "bad neighborhood" and her father worries about them when they go to school. She indicates that she and her sister walk to school and their private school's tuition is almost unaffordable. She states that she would like to

attend St. John College high school, she misses her mother, and if she were to pass her grade she will visit her in the summer. She indicates that she tried to live in Ecuador but prefers the United States.

The letter from the applicant's 14-year-old daughter, [REDACTED] conveys that she misses her mother, that living without her is hard, and that she visits her in the summer.

The record contains an Interim Progress Report on [REDACTED] dated September 30, 2005, which indicates that [REDACTED] needs improvement and is below average in five out of seven subjects.

The letter, dated February 15, 2006, from [REDACTED] the principal at St. Bernard of Clairvaux School, states that an extreme hardship has been placed on [REDACTED] to care for his family as best he can without his wife. She states that since [REDACTED] works full-time, he cannot assist his daughters with school-related activities (field trips, community hours, graduation). She states that the emotional stain is beginning to impact [REDACTED]

The record contains the letter from [REDACTED] dated February 16, 2006, a former teacher of [REDACTED]. The letter states that the absence of the girls' mother is taking a "heavy toll on them emotionally and academically." She indicates that their work ethic and attentiveness has declined, they are not in as good of spirits as in the past, and they need their mother to be with them.

The letter from [REDACTED] dated February 13, 2006, indicates that her student, [REDACTED] needs to have a complete family unit.

The letter, dated February 17, 2006, from the school counselor indicates that the applicant's daughters were referred to the Walk-In-Counseling Center in February to discuss emotional and academic concerns.

The record contains the psychological evaluation by [REDACTED] a licensed clinical psychologist. Ms. [REDACTED] indicates that [REDACTED] has had his daughters with him since 1997 and his son with him since February. She states that [REDACTED] indicates that he has been managing with the help of his mother, who lives with him, but that she is aging and her health is failing. [REDACTED] conveys that [REDACTED] states that one of his daughters was raised speaking Spanish and is having problems learning in school, and that he relies on his wife to teach him parenting skills. She states that [REDACTED] is experiencing high levels of anxiety and moderate levels of clinical depression and has headaches, low energy, appetite disturbance, decreased libido, and sleep disorders.

Applying the *Cervantes-Gonzalez* here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without her.

The applicant's husband makes no economic claim of hardship if he were to remain in the United States without the applicant.

In the psychological evaluation [REDACTED] states that [REDACTED] has high levels of anxiety and moderate levels of clinical depression. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the clinical psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the anxiety order and moderate clinical depression experienced by the applicant's spouse. Moreover, the conclusions reached in the 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.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is very concerned about separation from his wife and the impact of the separation on the children. The AAO is mindful of and sympathetic to the emotional hardship

that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The AAO notes that [redacted] evaluation indicates that the applicant's ten-year-old son recently came to live with [redacted]. We further note that the record conveys that [redacted] mother has been assisting him in raising the children, and that no evidence has been submitted to show that her health is failing, as stated in Ms. [redacted] evaluation.

The AAO finds that the record is insufficient to establish extreme hardship to [redacted] if he were to join the applicant in Ecuador.

[redacted] evaluation indicates that [redacted] claims to have tried living in Ecuador, but his trade as a plumber pays very little. Court decisions have shown that the difficulties [redacted] may experience in obtaining employment in Ecuador, and the general economic conditions in that country, are insufficient to establish extreme hardship. *E.g., Ramirez-Gonzales v. Immigration and Naturalization Service*, 695 F.2d 1208, 1211-13 (9th Cir.1983) (upholding BIA finding that [redacted] testimony and unsupported allegations are insufficient to establish inability to find employment in Guatemala); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciamba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

The record conveys that if [redacted] joins his wife in Ecuador he would have to leave his family living in the United States and the country where he has spent more than half of his life. The AAO recognizes that Mr. [redacted] readjustment to the culture and environment in Ecuador would be difficult; but these difficulties will be mitigated by the moral support of his wife and her relatives.

Furthermore, the AAO notes that courts in the United States have held that separation from one's family need not constitute extreme hardship. *E.g., Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), (affirming the BIA's finding of no extreme hardship on account of separation to the petitioner or to the couple that raised her, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child.").

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the

cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not 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).

Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing her inadmissibility under section 212(h) of the Act or whether she merits a waiver as a matter of discretion.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.