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**U.S. Citizenship
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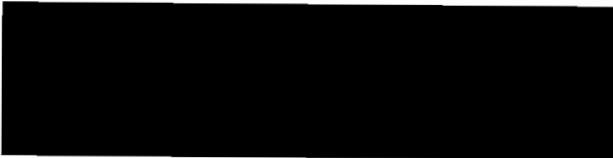
FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: **AUG 12 2008**

IN RE:



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 PETITIONER:



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 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 Armenia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated September 23, 2005.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the applicant's wife would not suffer extreme hardship if the applicant were removed from the United States and failed to give proper weight to the evidence of different types of hardship. *Brief in Support of Appeal* at 2. Specifically, counsel states that the applicant's life is in danger in Armenia, and the applicant's wife would suffer extreme hardship "should her husband be killed for political reasons, upon his forced return to Armenia." *Brief* at 3. Counsel further states that the applicant's wife would suffer financial hardship due to the loss of the applicant's income, as well as emotional hardship because they are a close family. *Brief* at 3. Counsel additionally asserts that the applicant's wife faces "great actual or prospective injury" because of "the risk of losing her husband through assassination" or "potentially falling victim to such a fate herself, should she return to Armenia with him." *Id.* Counsel further requests that the applicant be granted a waiver as a matter of discretion and states that given the totality of the circumstances, the applicant merits the relief requested as an exercise of discretion. *Brief* at 4. Counsel submitted with the waiver application and appeal letters from the applicant's wife, letters from relatives in support of the waiver application, a copy of the applicant's asylum application, and a copy of the applicant's credible fear determination. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 daughter would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be separately considered, except as it may affect the applicant's spouse.

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. 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 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-four year-old native and citizen of Armenia who attempted to enter the United States on August 22, 2000 by presenting a fraudulent permanent resident card under the name [REDACTED]. The applicant was detained and placed in expedited removal proceedings. He was

issued a Notice to Appear and paroled from custody after he was determined to have a credible fear of persecution in Armenia. *See Form I-870, Record of Determination/ Credible Fear Worksheet*. The applicant submitted an application for asylum (Form I-589) to the immigrant judge, but removal proceedings were terminated for the applicant to apply for adjustment of status before CIS and the Immigration Judge never took testimony or issued a decision concerning the asylum application. *See Order of Immigration Judge* dated November 16, 2004.

The record further reflects that the applicant's wife is a twenty-nine year-old native of Armenia and citizen of the United States whom the applicant married on November 26, 1999. The applicant and his wife reside in Glendale, California with their eight year-old daughter.

Counsel asserts that if the applicant is removed from the United States, he is likely to be killed because he was associated with the assassinated prime minister of Armenia [REDACTED]¹ and "was threatened with death by [REDACTED]'s killers." *Brief* at 2. Counsel states, "[T]he [REDACTED] family is not requesting a grant of the waiver merely because the qualifying relationship exists and they do not want to break up the family but also because of the danger presented by Mr. [REDACTED]'s removal to Armenia." *Id.* In support of these assertions, counsel submitted a copy of the applicant's I-589 application, in which the applicant states that he was Mr. [REDACTED]'s bodyguard and was targeted by individuals who beat him and demanded information about financial documents he delivered for the prime minister.

According to documentation submitted in support of the asylum application, Prime Minister [REDACTED] and seven other government officials were assassinated on October 27, 1999 when several gunmen stormed the building. *See Exhibits 3-9 in support of I-589 application*. These individuals held the other occupants of the building hostage before surrendering and being taken into custody. *See Yahoo News, "5 Men Charged in Armenia Shooting,"* November 1, 1999 *Exhibit 8*. The AAO notes that the applicant never testified before the immigration judge about his asylum claim and therefore no determination was made concerning the credibility of his statements on the I-589 application. The AAO further notes that although the applicant was found to have a credible fear of persecution, there is a lower standard for establishing a credible fear – a significant possibility that the applicant might establish eligibility before the immigration judge – and supporting documentation is generally not required to meet this lower standard. Counsel asserts that the applicant is in danger of being killed for political reasons if he is returned to Armenia, but submitted no evidence to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no documentation on the record to establish that the applicant ever worked for the assassinated prime minister, nor are there any recent materials submitted to document political and human rights conditions in the country to support the assertion that the applicant would still be danger in Armenia. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the

¹ The AAO notes that although Counsel refers to Mr. [REDACTED] as the assassinated Vice President, country conditions information indicates he was the prime minister. The AAO further notes that although the applicant's asylum application and testimony from his credible fear interview also refer to Mr. [REDACTED] as the Vice President, the applicant states he was the Prime Minister in his initial sworn statement given when he was detained by the INS in August 2000.

burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). There is insufficient evidence on the record to establish that the applicant is in danger if he returns to Armenia and that the applicant's wife would therefore suffer extreme hardship if she relocated there or if she remained in the United States.

Counsel additionally asserts that the applicant's wife would suffer economic hardship due to the loss of the applicant's financial support and emotional hardship if she and her daughter were separated from the applicant. Income tax returns submitted with the applicant's affidavit of support indicate that the applicant's wife was employed as the lead teller at a bank, and her income for tax years 2003 and 2004 amounted to most of the family's reported income. See *Joint Individual Income Tax Returns, 2003 to 2004*. Further, even if the loss of the applicant's income would have a negative impact on his wife's financial situation, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In her letter the applicant's wife states: "My husband is the best partner and the most wonderful father anyone can ask for." Letter from [REDACTED] dated October 18, 2005. She further states that if the applicant is removed, she would be unable to explain to her daughter that her father is no longer there. She states, "She will be devastated and feel like her father disowned her and that is something I just can't live with. Not only do I need his support financially but also emotionally." *Id.* No additional evidence was submitted concerning the potential emotional or psychological effects of the applicant's removal on his wife. The evidence does not establish that any emotional harm the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 familial and emotional bonds exist.

Based on the evidence on the record, the emotional and physical hardship that the applicant's wife would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the

level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen wife as required under section 212(i) of the Act.

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. 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.