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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: BOSTON Date:

DEC 18 2008

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:
[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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who has resided in the United States since 1992. She was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (welfare and food stamp fraud) and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain an immigration benefit in the United States by fraud or willful misrepresentation of a material fact. The applicant is the derivative beneficiary of an approved Petition for Immigrant Worker filed on behalf of her husband and she has four U.S. Citizen children. She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to remain in the United States with her husband and children.

The district director concluded that the applicant was statutorily ineligible for a waiver because she did not have a U.S. Citizen or Lawful Permanent Resident spouse or parent. The application was denied accordingly. *See Decision of the District Director* dated December 16, 2005.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application before her husband's application for adjustment of status was adjudicated because she is a derivative beneficiary of the immigration petition filed on his behalf. *See Notice of Appeal to the AAO* (Form I-290B). Counsel states that it was improper to deny the waiver application while her husband's application for adjustment of status was still pending because he was the potential qualifying relative for the waiver, and the applicant's application for adjustment of status could not be approved until her husband's application was approved because of her status as a derivative beneficiary. *Id.* Counsel further states that the applicant and her husband have four minor U.S. Citizen children who depend on them for care and support. *Id.*

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.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]his activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of welfare fraud and fraudulent use of food stamps, both crimes involving moral turpitude, on November 20, 1995. She was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act because she failed to disclose these criminal convictions on her application for adjustment of status and during her interview in connection with the application. The applicant must therefore seek a waiver under section 212(i) of the Act, which 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. The applicant is a derivative beneficiary of an immigrant petition filed on behalf of the applicant's husband, and therefore her application for adjustment of status could not be granted until her husband's application was adjudicated. The AAO therefore finds that the district director improperly denied the applicant's

waiver application before adjudicating her husband's application for adjustment of status. The AAO further notes that government records indicate that the applicant's husband was admitted as a Lawful Permanent Resident on April 10, 2008, and the applicant is now statutorily eligible for a waiver under section 212(i) of the Act as the spouse of a Lawful Permanent Resident.

The record contains references to hardship the applicant's children would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, although the applicant's children are qualifying relatives for the waiver pursuant to section 212(h)(1)(B) of the Act, hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse, because he is the only qualifying relative for the waiver under section 212(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission 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 *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 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 the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Guatemala who has resided in the United States since 1992, when she entered the country without inspection. The applicant's husband is a forty-five year-old native and citizen of Guatemala and Lawful Permanent Resident of the United States. The applicant and her husband and children reside in Providence, Rhode Island.

Counsel for the applicant asserted that the applicant's husband would be the requisite qualifying relative for the waiver under section 212(i) of the Act once his application for adjustment of status was approved. Counsel did not submit any evidence or documentation or make any specific assertion concerning the hardship the applicant's husband would experience if the applicant were removed from the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the 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 no evidence on the record to establish that the applicant's husband would experience any hardship beyond the type of hardship that a family member 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 any 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 her Lawful Permanent Resident spouse 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.