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U.S. Citizenship and Immigration Services

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FILE: Office: BALTIMORE Date: DEC 23 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 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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Colombia 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 procured entry into the United States by fraud or willful misrepresentation. On September 28, 2004, the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability, seeking 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 with her U.S. lawful permanent resident spouse and two U.S. citizen children.

On July 27, 2006, the district director issued a decision denying the application for waiver, concluding that the applicant has failed to establish that extreme hardship would be imposed on a qualifying relative should she be removed from the United States.

The applicant filed a Form I-290B, Notice of Appeal, on August 21, 2006. Counsel for the applicant asserted on appeal that the U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's husband would not suffer extreme hardship upon her removal from the United States. In support of her assertions, counsel submitted a brief, a copy of the U.S. Department of State's 2005 Country Report on Human Rights Practices in Colombia, and copies of the applicant's affidavit and psychiatric assessment that were previously submitted with the Form I-601.

The entire record was reviewed and considered in rendering this decision.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that on November 20, 1995, the applicant entered the United States on a B-2 visa and remained in the United States past the expiration of her tourist visa. In 2000, without exiting the United States, the applicant had her passport fraudulently validated with a post-dated re-entry stamp in Colombia so that she could return to Colombia and then re-enter the United States. As she had committed fraud in order to obtain entry into the United States, the director correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Once extreme hardship to a qualifying relative 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On her Form I-601, the applicant indicated that she is claiming eligibility for a waiver through her husband,), who is a lawful permanent resident of the United States. The applicant also listed on the Form I-601 two U.S. citizen children. Along with the Form I-601, the applicant submitted affidavits from her husband and herself, both dated July 21, 2004, and an assessment dated July 14, 2004 from a psychiatric social worker.

In his affidavit stated that his wife takes care of their children and their home while he works full time to support his family. Without her, he stated, he does not have the resources to care for the children. He indicated that most likely the children would have to remain with their mother if she is required to leave the United States, and the separation from them would be "unbearable" for him. further stated that his young son needs his presence, and that the children would miss many opportunities for education, work and a better future in the United States. In addition, he indicated that would be very concerned about his family's safety should they return to Colombia given the unstable condition in that country.

assessment is based on an approximately two-hour long visit with the applicant and her husband to assess their past and current emotional states. reported that the applicant indicated that she had a happy childhood and has always been close to her parents and siblings, who still reside in Colombia. reported that the applicant's husband had experienced a traumatic childhood due to his father's drinking and abusive behavior and the murder of one of his brothers in 1993, and in his teens, had thoughts of suicide. She noted that at the time of the assessment, he is still coping with his mother's recent death. She reported that "his health is good except that he takes medication for a thyroid condition." She further stated that he "appears to be sad, with low self-esteem, low self-confidence and initially appears clinically depressed," although she further opined that he "does not appear to have any psychotic characteristics nor is he suicidal or homicidal at this time." According to the report, indicated that he had contemplated seeking professional help for his difficulty fitting in and making friends after his move to the United States, but never actually sought help. reported that stated that he would not go to Colombia because he would not be able to find employment there, and further, he felt insecure about his wife and children living there in view of the violence and unrest in that country.

In denying the application for waiver of inadmissibility, the director acknowledged the disclosures in the affidavits and psychological assessment that were submitted with the Form I-601, but concluded that the evidence failed to demonstrate that the hardship the applicant's husband would experience upon her removal from the United States would rise to the level of "extreme hardship."

On appeal, counsel for the applicant submitted a brief and copies of the same affidavits and psychological report that were submitted with the Form I-601. In her brief, counsel contends that the

director erred as a matter of law in concluding that the hardship the applicant's husband would suffer upon her removal is less than "extreme hardship." Counsel asserts that the director failed to focus on low-self esteem and clinical depression; traumatic childhood and prior thoughts of suicide; and the fact that his family would be relocating to a country with a long history of internal conflict.

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

In his affidavit, stated that the separation from his wife, and possibly his children who would need to accompany his wife, would be "unbearable" for him. The AAO recognizes that Mr. will experience considerable hardship as a result of his wife's inadmissibility in the United States. However, the record does not demonstrate how situation, if he remains in the United States, would surpass the circumstances typical to individuals separated as a result of deportation or exclusion and rise to the level of "extreme hardship." Counsel asserts that USCIS must take into account report, and particularly her observation that "appears to be sad, with low self-esteem, low self-confidence and initially appears clinically depressed." It is noted that the director's decision discusses at length various aspects of Ms. report before arriving at the conclusion that the report fails to pinpoint any specific hardship that would suffer. Further, although the input of any mental health professional is respected and valuable, the submitted report is based on a single interview between the applicant's spouse and the psychiatric social worker. 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 generalized psychological symptoms suffered by the applicant's spouse. 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 findings speculative and diminishing the report's value to a determination of extreme hardship.

The AAO also recognizes concern regarding the needs of his children and the difficulties they would face if they were to depart from the United States to be with their mother. However, as previously noted, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under Section 212(i) of the Act. Further, the evidence of record is not sufficient to demonstrate that hardship to the children would result in extreme hardship to the applicant's husband, as required in connection with this waiver.

As noted above, the applicant must also establish extreme hardship to her spouse in the event that he relocates with the applicant to Colombia. Based on the record, does not appear to consider moving to Colombia with the applicant to avoid the hardship of separation a viable solution. As stated in report, believes it would not be possible for him find employment in Colombia. However, the AAO finds no documentation in the record that would support this claim. Without some documentary evidence of the lack of employment opportunities in Colombia, his statements are of little evidentiary value. Going on record without supporting

documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See 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)). Moreover, economic detriment, including the loss of employment and the inability to maintain a standard of living or to pursue a chosen profession, is not uncommon when individuals relocate outside the United States to join family members and, therefore, does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996).

Other than possible difficulty in finding employment, it is unclear what other form of hardship the applicant's spouse would encounter should he relocate to Colombia. The AAO notes that Mr. expressed concern about the safety of his family if they were to move to Colombia, and that the record contains a copy of the State Department Country Report on Human Rights Practices in Colombia for the year 2005. However, a report on country condition in general, without more, fails to address the issue of how the applicant' spouse in particular would be affected. Again, going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 165. While the AAO recognizes concern about his family's safety in Colombia, it must also be noted that the applicant's parents and siblings continue to reside in Colombia and would be able to provide the applicant and her spouse and children with needed support.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's husband will suffer as a result of separation from the applicant. However, based on the record, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. 627 (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish 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. "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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 her legal permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. 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) 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.