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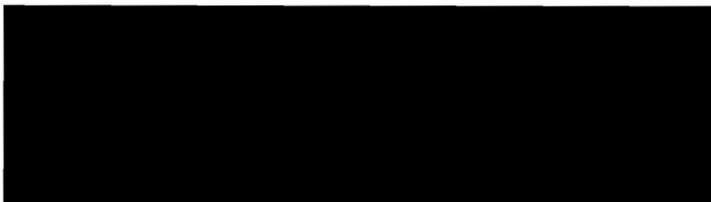
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: TEGUCIGALPA, HONDURAS

Date: JAN 29 2008

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Tegucigalpa, Honduras and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Costa Rica, was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). In addition, the applicant was found inadmissible 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 attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 30, 2006.

In support of the appeal, counsel submitted a certification from the applicant's spouse, [REDACTED] dated November 21, 2006; a letter confirming the applicant's spouse's employment, dated November 16, 2006; a letter from the applicant's spouse's babysitter, dated November 14, 2006; a copy and translation of the applicant's marriage certificate; a copy of the applicant's daughter's U.S. birth certificate; and a copy of the applicant's spouse's U.S. passport. In addition, the record indicates that in follow-up correspondence sent to the AAO, the applicant submitted evidence of the applicant's spouse's airline ticket and boarding passes for a trip to Costa Rica on May 4, 2007 to visit the applicant, and a letter confirming that the applicant's spouse is pregnant with a second child, dated June 19, 2007. Finally, the applicant submitted, on November 1, 2007, a letter from the applicant's spouse's physician, [REDACTED] dated October 16, 2007. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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...

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that the applicant entered the United States on April 13, 2000 with a nonimmigrant B1/B2 visa. Although he was authorized to remain in the United States for a six month period, the applicant remained in the United States until November 19, 2003. As the applicant had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the officer in charge correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant attempted entry to the United States using his nonimmigrant B1/B2 visa on August 21, 2004. However, at the time of attempted entry, the applicant failed to disclose his previous overstay in the United States, as referenced above, and his unauthorized employment. The applicant is therefore inadmissible to the United States for making a willful misrepresentation of material facts in order to procure entry to the United States.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Unlike waivers under section 212(h) of the Act, sections 212(i) and 212(a)(9)(B)(i)(II) do not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and any hardship to the applicant or their children cannot be considered, except as it may affect the applicant's 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).

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

To begin, the applicant's spouse, a U.S. citizen, contends that she will suffer emotional hardship were the applicant unable to reside in the United States. As she states, "...It is an extreme hardship for me to be separated from my husband. We have not lived together since we were married...I have had to travel to Costa Rica many times during the past two years so that I can maintain my relationship with my husband...This has been very difficult for me...emotionally..." *Certification of* [REDACTED] dated November 21, 2006.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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 based on the record. U.S. court decisions

have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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 removed from the United States.

According to the applicant's spouse's employer, [REDACTED], in a letter dated November 16, 2006, the applicant's spouse has been employed full-time since August 1994 and is currently earning over \$50,000 per year; the applicant's physical absence has not hindered her ability to work full-time while maintaining a household and caring for her child. In addition, the applicant's spouse states that she has family in the United States that she resides with. It has not been established that the referenced family members would be unable to assist the applicant's spouse in any way should the need arise. As such, while the applicant's spouse may need to make alternate arrangements with respect to her continued physical and emotional care, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse.

The applicant's spouse also asserts that she will suffer financial hardship if the applicant is unable to reside in the United States. As stated by the applicant's spouse, "...This has been very difficult for me... financially...I have had to move in with them [the applicant's spouse's family] so that I can have help in caring for my child...I had to hire a babysitter to watch my baby while I go to work because my husband is not here to help me..." *Id.* at 2.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant has provided no evidence to substantiate that he is unable to obtain gainful employment in Costa Rica, thereby assisting his spouse with the household and child-rearing expenses. Moreover, no financial documentation has been provided to establish that the applicant's spouse is experiencing extreme financial hardship that is directly connected to the applicant's physical absence. 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)). Although the applicant's spouse may need to make alternate arrangements with respect to her financial situation, it has not been established that such arrangements would cause her extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant to reside outside of the United States based on the denial of the applicant's waiver request. In this case, the applicant's spouse states that she can not move to Costa Rica "...because I have a very good job with Valley National Bank. I have had this job since 1994...Also, I cannot move to Costa Rica because by (sic) family is here..." *Id.* at 2.

The applicant has not provided supporting documentation to establish that the applicant's spouse would be unable to obtain gainful employment in Costa Rica. Moreover, the applicant's spouse's physician states that "...due to complications from previous pregnancy, she [the applicant's spouse] is scheduled to have her Cesarean Section on January 28, 2008..." *Letter from [REDACTED]*, dated October 16, 2007. However, [REDACTED] makes no references to the applicants' spouse's inability to travel abroad after the pregnancy. Finally, it has not been established that the applicant's spouse would experience extreme hardship based on a separation from her family, as the record contains no evidence of what specific involvement the applicant's spouse has with her family, and what hardship she would face were she not residing near them. The record is also silent with respect to establishing that the applicant's spouse, were she to relocate abroad, would be unable to return to the United States regularly to visit with her family.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant's waiver request is denied. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval 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. The waiver application is denied.