

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

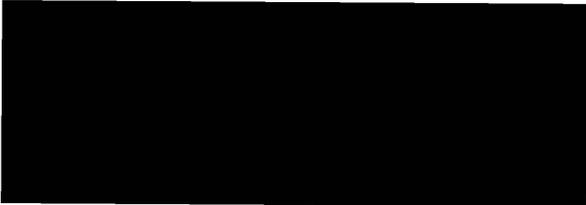
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*He*

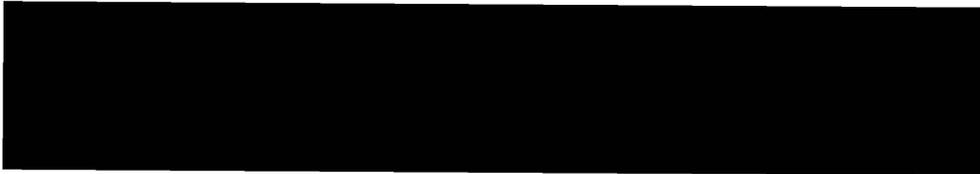


FILE: [Redacted] Office: TEGUCIGALPA, HONDURAS Date: **JAN 31 2008**

IN RE: [Redacted]

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.

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 (OIC), Tegucigalpa, Honduras, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Costa Rica, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to re-enter to the United States and join her husband.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant were required to remain in Costa Rica. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the OIC found that the applicant had concealed her relationship to her husband, a citizen of the United States, during an interview for a tourist visa. The applicant denies any intentional misrepresentation.

The record reflects that the applicant appeared at the United States consulate in San Jose, Costa Rica on February 12, 2004 for a nonimmigrant visa interview. Specifically, the applicant applied for, and was granted, a tourist visa. She did not disclose the existence of an American boyfriend or fiancée on the Form DS-256. The applicant married her husband, a citizen of the United States, later that same day.

The applicant and her husband contend that the applicant did not intend to mislead the consulate. They maintain that they were not dating at the time of the interview. The couple states that they met for the first time in December 1999 while the applicant's husband was participating in a mission trip to the applicant's hometown. They stated that the applicant's husband made several mission trips over the next several years, and during that time the two became friends. They state that on February 10, 2004, the applicant's husband arrived in Costa Rica for another mission trip. They agreed to meet for lunch after the applicant's visa interview. Regarding what happened next, the applicant's husband states the following on appeal:

I met [the applicant] at a Chinese Restaurant in the capital for lunch. There we spoke and had lunch. She was so excited that she had gone to the American embassy earlier that day to apply for her tourist visa and was granted the visa to come and visit the United States. I was so happy for her. We talked and talked and somehow I got the nerve to tell her that I felt much more than friendship towards her; I told her that I loved her. I waited to see her reaction she acted a bit surprised but responded to me that she was in love with me too. I could not believe that the woman that I was in love with felt the same way for me and I did not even know it. One thing lead [sic] to another and I just bursted out to her, "Marry me!" and she bursted out and said "Yes!" I called a friend of ours who is an attorney and two other friends as witnesses and we got married at around 5pm. It was a spontaneous thing. It was not rehearsed nor planned in any sort it just happen [sic].

Thus, the applicant and her husband were married a few hours after the applicant's tourist visa was granted.

The applicant's husband returned to the United States a few days later, and the applicant followed six weeks later, using her tourist visa. The applicant returned to Costa Rica in June 2004. The couple filed for an immigrant visa in July 2004, and the applicant elected to remain in Costa Rica for processing of the immigrant visa. The couple appeared for the applicant's permanent residency interview in San Jose, Costa Rica on September 14, 2004.

According to the OIC, the applicant admitted to consular officer during her permanent residency interview that she had concealed the fact that her fiancée was a citizen of the United States when she applied for the tourist visa, as she was afraid she would not receive the tourist visa if the consular officer knew her fiancée was an American. On appeal, the applicant and her husband state that no such admission took place, as the couple was not dating, and the applicant had no idea that her now-husband would propose marriage later that day.

The consular officer canceled the applicant's tourist visa and denied the permanent residency petition. The applicant submitted the Form I-601 on November 5, 2004. The Form I-601 was denied on February 9, 2006.

On appeal, counsel states that the applicant and her husband "never misrepresented any documentation nor any testimony before any official," and that, in order for a misrepresentation to occur, it must be willful. The applicant and her husband also assert that the applicant never intended to commit misrepresentation.

The record contains a memorandum from the United States Embassy in San Jose, Costa Rica, in which the United States consul in San Jose states that the applicant "admitted to ConOff during her IV interview that, although her fiancée was a U.S. citizen, she concealed that fact on her NIV application and her NIV interview because she was afraid she would not receive a visa if the consular officer knew her fiancée was an American."

Although the applicant and her husband state that no such admission occurred, as the couple was not dating at the time of the applicant's interview for the tourist visa, the AAO cannot disregard the statement of a consular official of the United States Department of State. Accordingly the AAO will not question whether a misrepresentation occurred, and thus whether the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and will adjudicate the waiver application on its merits.

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 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.

A section 212(i) waiver of the bar to admission resulting from a 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 the applicant herself experiences upon denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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 applicant is required to demonstrate that her husband would face extreme hardship in the event the waiver application is denied, regardless of whether he joins her in Costa Rica or remains in the United States without her.

Court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States 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 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 pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held 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.

The record reflects that the applicant's husband is a forty-seven-year-old citizen of the United States. He and the applicant have been married since February 12, 2004. He has two sons (both United States citizens) from his first marriage.

The record contains certified translations of three letters from the applicant. In her first letter, dated November 2, 2004, the applicant states that her husband proposed marriage the same day she received her tourist visa; that she did not think it would cause any difficulty; and that it would be an extreme inconvenience for her husband to move to Costa Rica, as he owns his own business and has lived in the United States for many years.

In her second letter, which is undated, the applicant states that she was told by the consular officer that she had lied at the time of her application for the tourist visa; that she did not lie, as she was not engaged to her husband at the time of her application; that her husband proposed marriage the day she received the tourist visa; that she does not understand why she must request a pardon for something she did not do (i.e., commit misrepresentation); that getting married is not a crime; that not planning the marriage in proper time was not a crime; that her husband was not her fiancée at the time she applied for the tourist visa; that she and her husband did not have a relationship at the time she applied for the tourist visa; and that proof of her good faith is that she was in the United States, but did not stay to live, but returned to Costa Rica to process her permanent residency paperwork.

In her third letter, submitted on appeal, the applicant states that when applying for the tourist visa, she simply wanted to go on vacation and rest; that her husband unexpectedly proposed marriage to her, and she accepted, after she obtained the tourist visa; that the day her husband asked her to marry him was a wonderful day for her; that she was surprised when the consular officer accused her of lying on the application for the tourist visa, as she did not lie; that the consular officer treated her and her husband as lower, second class, inferior persons; that the consular officer raised his voice and treated the applicant and her husband in a degrading manner; that the consular officer wanted the applicant to admit that she had lied on her application for a tourist visa, but she refused; that the consular officer told the applicant he would make her life unbearable if she did not admit to lying on the tourist visa application; that her husband was required to file the Form I-601 five times, as the consulate kept losing the paperwork; that she and her husband are living in a very sad situation, as they want to be together; and that, once again, she did not lie on her tourist visa application, as she and her husband did not have a relationship until the afternoon after her tourist visa application.

The record also contains six letters from the applicant's husband. In his October 13, 2005 letter, the applicant's husband states that on the day of their marriage (February 12, 2004), the applicant had secured a tourist visa, and later that day, he proposed marriage; that, although they had been close friends for some time, she had no idea that he would propose marriage that day and that they would also be married that day; that the couple traveled to Clearwater, Florida on March 29, 2004 and set up housekeeping; that they returned to Costa Rica in June 2004 to apply for the applicant and her daughter's immigrant visas; that the shock of not being able to bring his bride home to Florida was just the beginning of the emotional roller coaster ride on which he has been; that, with each form completed, each letter written, and each phone call placed, his hope was renewed and then shattered by requests for more forms; that he and the applicant have cooperated in every way possible; that the situation has taken an emotional toll on him; that he is not able to sleep or eat normally; that he is unable to concentrate on the everyday activities of living; that all of his productivity is focused on bringing the applicant to the United States; and that he prays every day that he and the applicant will soon be living together as husband and wife.

In an undated letter submitted with the Form I-601, the applicant's husband states that if the applicant is not allowed to enter the United States, he would have to move to Costa Rica in order to live with her. He states that he would have to close or sell his business, which he established in 1999. He would have to fire his two full-time employees. He states that he would also have to leave behind his two minor children, and that he would not be able to support their financial necessities as he does presently. He would also be away from his children for long periods of time, which would affect them adversely. He also states that he would lose his church community.

In an undated letter the applicant's husband again narrates the events of February 12, 2004, and states again that he and the applicant were close friends at the time of her tourist visa application, and that the applicant had no idea he would propose marriage that afternoon; that the shock of not being able to return to the United States with his bride has been devastating; that he has returned to Costa Rica five times and incurred severe financial hardship with each returning visit; and asks that the government allow the couple to be reunited.

In another undated letter, the applicant's husband again narrates the events of February 12, 2004, and states again that he and the applicant were close friends at the time of her tourist visa application, and that the applicant had no idea he would propose marriage that afternoon; that the allegations the applicant falsified her tourist visa application are erroneous and have no merit; that the shock of not being able to return to the United States with his bride has been devastating; that he has returned to Costa Rica six times, causing an overwhelming financial burden; that they have complied with all requests made of them; and asks that the government allow the couple to be reunited so that they can start their lives together and savor the joy and excitement they shared on their wedding day.

In his March 23, 2006 letter, the applicant's husband states that if he were to relocate to Costa Rica, he would have to dissolve his business, since he is the only owner; that his current employees are laborers who cannot get into contracts with potential clients; that he does the job of three or more people and, if he were to move, would have to hire at least that many people to cover what he does, which he cannot afford to do, as the company is small; that if he were to relocate to Costa Rica he would not be able to afford to hire a manager and craftsmen to take the place of what he currently does, as doing so would create a financial crisis; and that his business is the only source of income for himself and his family, and that his children depend upon his earnings.

The applicant's husband also submits a letter on appeal. In this letter he states that he met his wife in December 1999; that he traveled to Costa Rica several times between May 2000 and December 2003, and that he became close friends with the applicant; narrates the events of February 12, 2004, the day of the tourist interview, marriage proposal, and marriage; that the consular officer who conducted the applicant's permanent residency interview was rude, would not let him or the applicant explain anything, and wanted the applicant to say that she had lied on the tourist visa application; that, when he asked the consular officer for his name the consular officer refused to provide it; that, when he told the consular officer he wanted to speak with the General Counsel the consular officer refused, telling the couple that his word was the last; that during the interview the applicant never admitted to concealing their relationship, and that the consular officer was stuck on this idea and was trying to put words into the applicant's mouth; that, while the story of how he and the applicant got married may seem odd, there have been other people who have been dear friends and then, on the spur of a moment, become lovers, significant others, spouses, etc.; that in Costa Rica all that is necessary in order to get married is an attorney and two witnesses; asks what is wrong with wanting to marry his best friend; suggests that

wordage of the Form DS-156 be amended so that someone like himself would not have to go through such an ordeal for being a sentimental and romantic person; and that he hopes the government will find it in its heart to grant the waiver.

As noted previously, the testimony of the applicant and her husband regarding whether the applicant admitted to concealing her relationship to her husband conflicts directly with that of the consular officer. The AAO cannot disregard the consular officer's clear language. The AAO finds that the applicant admitted to concealing her relationship with her husband on September 14, 2004.

The record also contains an October 17, 2005 letter from the applicant's husband's ex-wife, who states that the applicant's husband has been providing for his sons' financial needs since they were born; that the applicant's husband is a good and caring father who provides for his sons both financially and emotionally; that their sons would suffer extreme hardship if the applicant's husband were to relocate abroad; that their sons are used to having their father around; that she has a healthy relationship with the applicant's husband; and requests that the waiver application be approved.

The record also contains letters from the applicant's husband's clients, pastors, friends, and a Florida State Representative, all attesting to the applicant's husband's good moral character. The record also contains evidence that the applicant's husband suffered from a torn rotator cuff in 2005.

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).

As noted previously, the applicant must establish that her husband would face extreme hardship regardless of whether he joins her in Costa Rica.

The AAO finds that applicant's husband would face extreme hardship if he joins the applicant in Costa Rica. He would leave behind his two sons, as well as his business.

However, 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 husband will face extreme hardship if remains in Florida without the applicant. If he remains in Florida without the applicant, the record fails to establish that he would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission to the United States. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be any greater than that normally be expected upon separation. The costs, both financial and emotional, of

separation and the maintenance of two households are faced by everyone in the applicant's husband's situation, and the record fails to establish that the hardships he would face would be greater than those faced by others.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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 adjudicating this application, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon separation from a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her husband would suffer hardship unusual or beyond that normally expected upon separation from a spouse, if he remains in the United States without her. As noted previously, the common results of removal or refusal of entry are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of removal or refusal of entry and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.