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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: SAN FRANCISCO DISTRICT OFFICE Date **JUL 23 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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, 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 Bolivia, 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 lawful permanent resident of the United States and 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 with his wife.

The District Director 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 wife would suffer extreme hardship if the applicant is required to return to Bolivia. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's ground of inadmissibility, the record establishes that he entered the United States, fraudulently, by presenting a passport and tourist visa issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (identity) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not dispute his inadmissibility; rather, he is filing for a waiver of his inadmissibility.

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 or his children would experience 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 wife. 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 his wife would face extreme hardship in the event the waiver application is denied, regardless of whether she joins him in Bolivia or remains in California without him.

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 (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 *Perez v. INS*, 96 F.3d 390 (9th 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 establishes that the applicant's wife is a lawful permanent resident of the United States. She and the applicant have been married since 1966. The couple has three adult daughters, two of whom are United States citizens, and one of whom is a lawful permanent resident of the United States.

The record contains three affidavits from the applicant's wife. In her first affidavit, dated February 26, 2003, the applicant's wife states that she married the applicant in 1966, in Bolivia; that the applicant is warm, caring, and responsible; that the applicant is her only companion; that the applicant prepares her meals so as to ensure she follows the dietary recommendations from her doctors in order to treat her high level of cholesterol; that she has rheumatoid arthritis, and sometimes has difficulty driving; that she depends upon the applicant to drive her where she needs to go on days she cannot do so due to her rheumatoid arthritis; that the applicant is very solicitous and patient when she is ill; that she cannot imagine life without the applicant; and that the death of her mother in Bolivia was easier to accept with the applicant standing at her side.

In her second affidavit, dated April 27, 2004, the applicant's wife explains that she came to the United States in 1988 to help her sister, who had fallen into a depression and had children who needed her care; that she was compelled to remain in the United States to help; that the applicant was unable to obtain a visa to enter the United States and join her and, accordingly, obtained a passport and visa in another person's name; that all three of the couple's daughters now live in the San Francisco Bay area, and all have families of their own; and that the applicant is indispensable in her life.

In her third affidavit, dated March 6, 2008, the applicant's wife repeats much of the information provided in her earlier affidavits, and adds that the applicant has a vital role in his grandchildren's lives; that she needs the applicant more with each day that passes; that she is unable to work; that the applicant is her sole economic support; and that, if she were to return to Bolivia she would be deprived of the opportunity to see her grandchildren grow up.

On appeal, counsel contends that the applicant's wife would face a life of poverty in Bolivia; that the family is very close-knit; that she has no close relatives remaining in Bolivia; that her health insurance is provided through the applicant's employment; and that she fears that if she were to return to Bolivia her health would deteriorate, as she would not be able to access comparable health care for her arthritis and high blood pressure.

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).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”)

Additionally, the Ninth Circuit Court of Appeals has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

Based upon the above case law, the AAO finds that that applicant has established extreme hardship to his wife if she were to remain in the United States while he returned to Bolivia. Documentation and statements in the record regarding her medical condition and financial situation, combined with the emotional toll of the separation of this long-standing marriage cumulatively rise to the level of extreme hardship.

The applicant has not, however, established that his wife would face extreme hardship if she joins him in Bolivia. The record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation. Country condition information contained in the record reflect that the financial situation and medical facilities in Bolivia are not on a par with the United States, but they do not reflect that the applicant’s wife would experience extreme hardship if she were to join him in Bolivia. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. No evidence was submitted to establish that she would experience financial or emotional hardship that would rise to the level of “extreme” as contemplated by statute and case law in such a situation. Nor has the applicant established that his wife’s medical conditions could not be treated in Bolivia. Moreover, the AAO notes that the applicant’s wife is a former national of Bolivia, which would diminish the severity of her cultural readjustment vis-à-vis others in her situation.

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 thus the familial and emotional bonds, exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship indicated in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his lawful permanent resident wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse if she were to join him in Bolivia. 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.