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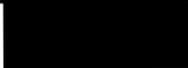
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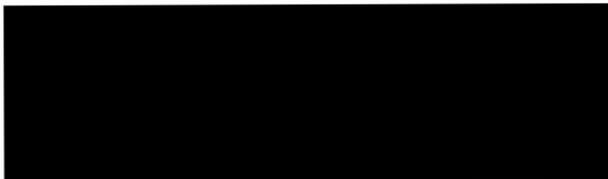
Applicant:



APPLICATION:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Columbia 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 seeking admission into the United States by fraud or willful misrepresentation; and under section 212(a)(9)(B)(v), of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) for unlawful presence. The applicant, who is the wife of a naturalized citizen of the United States, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director Mexico*, dated March 22, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that the applicant sought to gain admission into the United States as a visitor for pleasure by presenting to an immigration inspector a passport with a visa and a backdated stamp showing a return trip to Columbia so as to conceal prior admissions into the United States. It further reflects that during the applicant's prior four admissions into the United States as a visitor for pleasure she engaged in unauthorized employment. Because the applicant willfully misrepresented material facts, her true intention to work while in the United States and her use of a passport with a backdated stamp to gain admission into the United States, the AAO finds her inadmissible under section 212(a)(6)(C) of the Act.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² See DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

In an undated letter, the applicant indicates that she overstayed her tourist visa by approximately one year because Citizenship and Immigration Services did not approve her request for an extension. The record conveys that the applicant left Columbia on August 30, 1999 and returned there on December 13, 2001; thus, she accrued over one year of unlawful presence and triggered the ten-year-bar when she departed from the country. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

The waiver for fraud and misrepresentation is under section 212(i) of the Act, which states 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.

The waiver for unlawful presence is under section 212(a)(9)(B) of the Act, which states that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

The waivers under section 212(i) and section 212(a)(9)(B) of the Act have the same requirements. The applicant must show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without the applicant, and in the alternative, if he joins the applicant to live in Columbia. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains a psychological evaluation, letters, a Consular Information Sheet on Columbia, and other documents.

The psychological evaluation by [REDACTED] L.M.H.C., Psy.D., dated June 18, 2006, of [REDACTED] [REDACTED], the applicant’s husband, conveys that [REDACTED] immigrated to the United States from Columbia in 1991. [REDACTED] states that [REDACTED] has a close relationship with his younger brother and sister and with his mother, who lives in Miami. She conveys that [REDACTED] opened a business, [REDACTED], in 2001, and an accounting firm in December 2005. She states that his wife’s immigration problems have impacted the businesses because he financiall su orts her and his stepdaughter and often travels to Columbia to be with them. She states that [REDACTED] has “been experiencing a significant amount of depression and anxiety due to his wife’s deportation that has placed his business accomplishments at risk.” [REDACTED] conveys that [REDACTED] and the applicant expedited their wedding plans following the applicant’s removal from the United States. She states that [REDACTED] indicates that he has difficulty sleeping, is frustrated and irritable, cannot concentrate, and has begun smoking a pack of cigarettes every two days. [REDACTED] indicates that [REDACTED] has depression and anxiety and his mental status is exacerbated by separation from his wife, decreased work performance, and his financial situation. [REDACTED] recommends that [REDACTED] be referred for a psychiatric evaluation and indicates psychological counseling would be beneficial. She states that the separation of [REDACTED] from his wife has caused “a significant level of emotional hardship on his day-to-day functioning.”

In his hardship letter, [REDACTED] indicates that as a result of separation he feels anxious and nervous, has lost weight and hair, and is lethargic. He indicates that he often travels to Columbia to be with his wife and son, who live where there are guerrillas or militias and in what President Pastrana designated as a negotiation area with outlaw groups, which places his family at risk. [REDACTED] states that his financial responsibilities have increased on account of traveling to Columbia and providing for his family's living expenses.

The certification dated September 29, 2005 by a psychologist conveys that the applicant has depression, anxiety reaction, and post-traumatic stress disorder caused by her "relationship of hardship with her husband." The psychologist states that the family should live under the same roof and that the applicant has undergone a psychological process for one month with a total of four sessions.

The letter dated September 27, 2005 by [REDACTED], president of [REDACTED], states that he has known [REDACTED] for 15 years and that [REDACTED]'s spirits have been affected by his wife's immigration situation.

The letter by the applicant conveys that it is hard living away from her husband. She indicates that she smokes, which is affecting her health, and feels uncertain and powerless.

The record contains a letter in which [REDACTED] describes how he met the applicant.

On appeal, counsel refers to the assertions of the applicant's husband, which have been set forth already in this decision, to establish that the applicant's husband would experience extreme emotional and financial hardship if the waiver application were denied. Counsel contends that the district director failed to consider the ties of the applicant's husband to the United States, his businesses, the financial impact of separation, and Columbia's country conditions.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's husband if he were to remain in the United States without the applicant.

With regard to the psychological evaluation of the applicant's husband, although the input of a mental health professional is respected and valuable, the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for depression and anxiety. Furthermore, the conclusions reached in the evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Counsel is correct in stating that family separation is important in determining hardship. Courts have stated that "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).

The AAO is mindful of and sympathetic to the emotional hardship [redacted] has endured as a result of separation from his wife and stepchild. However, the AAO finds that the emotional hardship should be weighed against the fact that prior to [redacted]’s marriage to the applicant he was aware that the immigration judge ordered her expedited removal from the United States. *Matter of Cervantes*, *supra* at 567, indicates that it is relevant to consider whether the applicant’s spouse married the applicant after removal proceedings began. The court stated that:

[T]he respondent’s wife knew that the respondent was in deportation proceedings at the time they were married. In contrast to the respondent’s assertions on appeal, this factor is not irrelevant. Rather, it goes to the respondent’s wife’s expectations at the time they were wed. Indeed, she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. In the latter scenario, the respondent’s wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent’s argument that his wife will suffer extreme hardship if he is deported.

(citations omitted).

[redacted] knew that he might be faced with the decision of parting from the applicant or following her to Columbia in the event that she was not allowed entry into the country. In the latter scenario, [redacted] was also aware that a move to Columbia would separate him from his family members living in the United States. The AAO therefore finds that in marrying the applicant with this awareness, the claims made by [redacted] and [redacted] which is that the applicant’s husband will suffer extreme hardship if his wife’s waiver is not granted, are greatly diminished.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

[redacted] indicates that he will experience financial hardship if separation from his wife and stepchild continues. However, the record contains no documentation of [redacted]’s household expenses and income.

Without this documentation, the AAO cannot determine whether [REDACTED] will experience extreme hardship if his wife and stepchild remain in Columbia. 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)).

The AAO notes that the record indicates that the applicant's wife and parents support the applicant's child, who was born in 1997 in Columbia, and it shows that the applicant was employed as a restaurant manager in Columbia in 1999.

The record is insufficient to establish that the applicant's husband would experience extreme hardship if he were to join the applicant to live in Columbia.

The conditions in the country where the applicant's husband would live if he joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[REDACTED] indicates that his wife and stepchild live in a dangerous area in Columbia. The submitted country report on Columbia does not substantiate in any way [REDACTED]'s claims that violence in Columbia is so widespread that his family's life is in danger there. No evidence has been presented to establish that Mr. [REDACTED]'s family has been or will be specifically targeted by any group or person. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

Counsel indicates that one of [REDACTED]'s ties to the United States is his business. "Economic detriment, including a loss of investment, does not compel a finding of "extreme hardship." *Chokloikaew v. INS*, 601 F.2d 216 (5th Cir. 1979) (liquidation of a swimming pool service company is not extreme hardship) and *Asikese v. Brownell*, 1956, 97 U.S.App.D.C. 221, 230 F.2d 34 (citing loss of investment in luncheonette).

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant's husband were to remain in the United States without her, or in the alternative, that he were to join her to live in Columbia. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case

constitute extreme hardship to a qualifying family member for purposes of relief under sections 212(i) or 212(a)(9)(B) 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(i) or 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.