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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H2

FILE:

Office: NEWARK, NJ

Date: APR 16 2009

RELATES)

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. Glassom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to 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 to the United States by fraud or willful misrepresentation.<sup>1</sup> The applicant's spouse is a U.S. citizen and she has two U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, at 6, dated June 23, 2006. The AAO also concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), accordingly. *Decision of the AAO Chief*, at 4, dated August 5, 2008.

On motion, counsel asserts that the applicant's children's hardship counts for determining waiver eligibility and requests that the AAO review the additional evidence presented. *Form I-290B Attachment*, 1-2, received September 5, 2008.

The record includes, but is not limited to, counsel's Form I-290B attachment; statements from the applicant's spouse, religious leaders, and the applicant's older child; country conditions information; family pictures; and tax returns. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 11, 1988, the applicant presented a passport and visa in another person's name while seeking admission to the United States.<sup>2</sup> As a result of this

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<sup>1</sup> The applicant was also found to be inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), for entering the United States without inspection. The AAO notes that the applicant filed for adjustment of status under section 245(i) of the Act, 8 U.S.C. § 1255(i), which permits adjustment of status in spite of an entry without inspection. Therefore, section 212(a)(6)(A)(i) of the Act does not apply to the applicant in this case. The applicant was also found to be inadmissible under sections 212(a)(9)(C)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i) and (ii), which apply to those who enter or attempt to reenter the United States without being admitted after being unlawfully present for an aggregate period of more than a year or after having been ordered removed. The applicant is not inadmissible under section 212(a)(9)(C)(i)(I) or (II) of the Act as her last attempt to enter the United States without being admitted and her actual entry without being admitted occurred prior to April 1, 1997. An attempt to enter without being admitted or entry without being admitted must occur on or after April 1, 1997 for section 212(a)(9)(C)(i)(I) or (II) of the Act to apply.

<sup>2</sup> The record also reflects that on December 20, 1988, the applicant provided a false name, date of birth and country of citizenship to an immigration official after entering the United States without inspection. This misrepresentation does

misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.<sup>3</sup>

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. On motion, counsel contends that hardship to the applicant's U.S. citizen children must be taken in to account. *I-290B Attachment*, at 1. The AAO notes that hardship to the applicant or her children is not a permissible consideration in a 212(i) waiver proceeding, except to the extent that such hardship affects the qualifying relative.<sup>4</sup> Once extreme hardship is established, it is but one favorable factor to be

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not appear to render her inadmissible under 212(a)(6)(C)(i) of the Act as she was not seeking to procure, nor did she procure, a visa, other documentation, admission into the United States or other benefit provided under the Act. The applicant was placed in removal proceedings and the immigration judge administratively closed her proceeding on April 26, 1989.

<sup>3</sup> The record is not clear as to whether the applicant was expeditiously removed after her attempted entry on November 11, 1988. Therefore, the AAO will not determine whether she is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for seeking admission to the United States without remaining outside of the United States for five years after receiving an order of expedited removal, and whether she is required to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

<sup>4</sup> Counsel cites *Matter of Fu*, 23 I&N Dec. 985, 988 as requiring the AAO to consider whether the applicant's two children would suffer extreme hardship in the event that her waiver application is denied. *Id.* The AAO notes, however, that *Matter of Fu* addresses the availability of a waiver under section 237(a)(1)(A) of the Act based on charges of inadmissibility at the time of admission under section 212(a)(6)(C)(i) and (7)(A)(I)(1) of the Act. *Matter of Fu*, at 988. However, it does not address the extreme hardship analysis and any of the relevant hardship factors.

considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Ecuador or in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Ecuador. Counsel states that the applicant's older son has uncertain prospects in Ecuador as his education has been conducted in English, Ecuador offers substantially fewer employment opportunities than the United States, 70 percent of the population in Ecuador lives below the poverty line, the applicant's spouse's parents (now father) and nine of his siblings are either U.S. citizens or lawful permanent residents, the political situation in Ecuador is far from stable, and the family is very integrated into the United States. *Brief in Support of I-601*, at 1-3, undated. The record includes country conditions information on Ecuador. However, it does not contain sufficient evidence to establish that the applicant's spouse would encounter financial hardship if he resided in Ecuador. The record does not address the effect on the applicant's spouse due to separation from his family. The applicant's older son states that he and his brother are totally assimilated into the U.S. culture and they have nothing in Ecuador. *First Statement from Applicant's Older Son*, at 1, dated August 30, 2005. The record reflects that the applicant's children are 19 and 13 years old. *Applicant's Children's Birth Certificates*. The AAO notes that the Board of Immigration Appeals (BIA) found that a fifteen-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). While the AAO finds *Matter of Kao and Lin* to be persuasive in this case, the applicant's children are not qualifying relatives in this proceeding and the record does not provide evidence of how their hardship upon relocation would affect the applicant's spouse, who is the qualifying relative. Having reviewed the record, the AAO finds that insufficient evidence has been provided to establish that the applicant's spouse would suffer extreme hardship in the event of relocation to Ecuador.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that the applicant has been the center of his life for 25 years, the applicant has dedicated herself to raising and educating their children, their younger son would be easy prey for the difficulties of teenagers without the applicant,

the applicant is dedicated to the upkeep of the home and maintains a beautiful garden of flowers and fruits, he could not raise and keep his family achieving goals without the applicant, and his father and his sister who has Down syndrome need close attention, which he indicates the applicant would provide. *Applicant's Spouse's Statement*, at 1-2, dated August 22, 2008. The applicant's pastor states that it will be very painful for the applicant's spouse and children to lose her. *Letter from Applicant's Pastor*, dated August 15, 2008.

The applicant's older son states that the applicant is the main figure in his life, she is essentially the leader of the household, she helps his younger brother with his homework and keeps him out of trouble, she organizes family events, and she is his father's best friend and life-long partner. *Second Statement from Applicant's Older Son*, at 1-3, dated August 16, 2008. The applicant's older son also asserts that his father works 18 hours a day and that his little brother would be lost without their mother. *Id.* at 1, 3. The applicant's family was evaluated by a psychologist who states that separation from the applicant would cause severe hardship to the children and would affect their emotional development, would cause severe hardship and enduring harm to her spouse, as he would have no one to care for the children and the family structure would be destabilized. *Psychological Evaluation*, at 2, dated March 8, 2006. The psychologist concludes that the removal of the applicant would cause extreme hardship to her spouse and children. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation, which is based on a single interview with the applicant and her family, fails to identify what specific emotional or psychological impacts the applicant's inadmissibility would have on her spouse or her children, or to indicate how any emotional hardship the applicant's children would experience would affect their father. Accordingly, the AAO finds the generalized nature of the evaluation's conclusions to significantly diminish its value to a determination of extreme hardship. Based on the record before it, the AAO does not find the applicant to have submitted sufficient evidence of emotional, financial or any other type of hardship to establish that her spouse would suffer extreme hardship if he were to remain in the United States without her.

U.S. 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, *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 being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.

**ORDER:** The previous decisions of the officer in charge and the AAO are affirmed.