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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **APR 17 2009**

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Turkey 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). The applicant is the spouse of a U.S. Citizen and has a U.S. citizen child. She is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for entering the United States on a B2 visitor's visa on July 16, 1990 and then violating her nonimmigrant status by becoming employed in August 1990. *District Director's Decision*, dated May 31, 2006.

The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, counsel asserts that the applicant was employed as a flight attendant when she entered the United States in July 1990 and did not commence employment in the United States until months after her arrival. *Exhibit "A" Attachment to Form I-290B*, dated, May 19, 2006. He states that the applicant's former attorney erred when he indicated in an application submitted in 1994 that the applicant commenced employment soon after her arrival in 1990. Counsel also states that the applicant had no intention of being employed when she entered the United States and that she was entering the United States to visit her great uncle who was sick at the time. Counsel asserts further that the district director failed to give proper consideration to the factors of extreme hardship in the applicant's waiver application. *Id.*

The record reflects that the applicant was granted a visa on July 16, 1990 and at the time of application told the consular officer that she was going to visit her uncle in the United States. The applicant states that she was working as a flight attendant when she entered the United States in 1990. *Applicant's Statement*, January 28, 2006. She states that she made two entries into the United States in 1990 and one of them was to visit her uncle. She states that she did not commence employment in the United States until months after her last arrival in 1990 and that when she entered the United States she had no need to be employed because she had a job as a flight attendant. The applicant states that her attorney erred in writing that she was employed soon after she entered the United States. *Id.* During her interview with a consular officer the applicant stated that she signed an employment contract to work in the United States in late August 1990, but did not start working until October 1990. In an Application for Alien Employment Certification (Form ETA 750), dated October 25, 1992, the applicant stated that she began employment in August 1990. In a supplement to a previously filed Form ETA 750, dated August 4, 1998, the applicant amends her employment start date to September 1990. A letter from the applicant's employer is also included in the record. The applicant's employer states that she was employed from September 1990 to June 1994. *Letter*

from Employer, dated December 29, 1997. However, a letter submitted to the consulate by the same employer, dated October 5, 1993, states that the applicant's employment began in August 1990. Finally, in an interview with the consular officer, the applicant states that she signed her employment contract in August 1990, but did not begin work until September 1990.

The AAO notes that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this effort, the consular officer requested that the applicant submit evidence of the exact date of when she started work and/or when she signed her employment contract. The applicant did not submit the requested evidence.

§ 40.63 N4.7 of the DOS Foreign Affairs Manual states:

In determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: apply for adjustment of status to permanent resident or fail to maintain their nonimmigrant status (for example, by engaging in employment without authorization...)

With respect to the second category referred to above, the fact that an alien's subsequent actions are other than as stated at the time of visa application or entry does not necessarily prove that the alien's intentions were misrepresented at the time of application or entry. As to those who fail to maintain status, you should also recognize that the precise circumstances under which the change in activities or the overstay arose have an important bearing on whether a knowing and willful misrepresentation was made. The existence of a misrepresentation must therefore be clearly and factually established by direct or circumstantial evidence sufficient to meet the "reason to believe" standard. Although indeed more flexible than the judicial "beyond reasonable doubt" standard demanded for a conviction in court, a "reason to believe" standard requires that a probability exists, supported by evidence which goes beyond mere suspicion."

To address this problem the Department of State developed the 30/60-day rule. Under this rule, "if an alien violates his or her nonimmigrant status within 30 days of entry, there is a presumption that the applicant misrepresented his or her intention in seeking a visa or entry... If an alien initiates such violation of status more than 30 days but less than 60 days after entry into the United States, no presumption of misrepresentation arises. However, if the facts in the case give you reasonable belief

that the alien misrepresented his or her intent, then you must give the alien the opportunity to present countervailing evidence.... When violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility.” *Id.* at § 40.63 N4.7-4.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In this case, the record is not clear as to the exact date that the applicant became employed in violation of her status as a visitor to the United States. The record does indicate that the applicant was approved for a visitor’s visa on July 16, 1990 and signed an employment contract in August 1990. Thus, although the evidence does not establish the exact date the applicant became employed and/or signed her employment contract, there is ample reason to believe that the applicant violated her visitor status within sixty days of her entry into the United States.

Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant’s U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or her child experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant’s spouse and/or parent.

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 applicant 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 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.

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Turkey and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states that the forced departure of the applicant from the United States would result in the break-up of his family and cause psychological and emotional problems that would cause their child severe life-long hardships. *Spouse's Statement*, dated January 28, 2006. He also states that he will suffer the loss of physical companionship and the loss of economic support because he will be forced to leave his current business to care for their child. The applicant's spouse states that the applicant's inadmissibility will cause him to have to choose between going into exile that would infringe on his ability to enter the United States or being separated from his spouse. The applicant's spouse states that the applicant's inadmissibility will cause him to have to maintain two households, one in the United States and one overseas and that having to relocate overseas would be traumatic for his child. *Id.*

The record also contains a psychological evaluation from [REDACTED] who states that she met with the applicant and her family on May 15, 2006. *Psychological Evaluation*, dated May 18, 2006. [REDACTED] states that the removal of the applicant from the United States and separation from her son would cause profound and irreversible damage to her son's psychological and neurological make-up. She states that it is not in the best of interest of the child for the applicant's mother to be removed from the United States. In addition, [REDACTED] states that if the whole family moved to Turkey it would place a huge stress on their child. She states that the applicant's spouse does not have a good prospect for employment in Turkey and the applicant's child does not speak the Turkish language. *Id.* The AAO notes that although the input of any mental health professional is respected and valuable, the submitted report is based on one meeting between the applicant's family and [REDACTED]. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship with a mental

health professional and are of diminished value to a determination of extreme hardship. Further, the record does not establish that [REDACTED] is an expert on conditions in Turkey.

Furthermore, 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 record does not contain any documentation to support the assertions made regarding the conditions in Turkey or the assertions regarding the family's circumstances in the event they are separated and how these circumstances will cause extreme hardship to the applicant's spouse, the only qualifying relative in the applicant's case. Thus, the AAO cannot find that the applicant's spouse has shown that her inadmissibility will cause extreme hardship to her U.S. citizen spouse.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.