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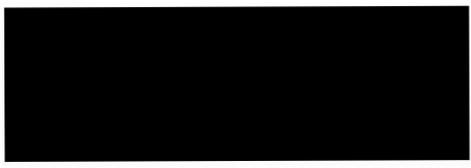
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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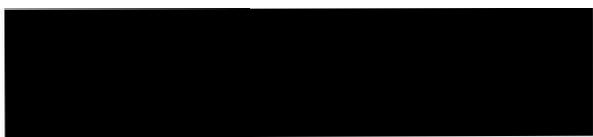


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 22 2009

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:



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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Colombia who attempted to enter the United States on March 17, 1974 with another individual's passport and visa. She was subsequently convicted of 18 U.S.C. 1546, (Fraud). The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant is the spouse of a lawful permanent resident and the daughter of lawful permanent residents. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 29, 2006.

On appeal, counsel asserts that the denial of the waiver application was capricious, arbitrary and contrary to law, dismissing spousal separation, the health of the applicant's spouse and the economic hardship he would experience in Colombia.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

....

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 record establishes that the applicant attempted to enter the United States on March 17, 1974 using another individual's passport and visa. She was subsequently convicted of 18 U.S.C. 1546, (Fraud). The applicant is inadmissible under Section 212(a)(6)(C)(iii) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the lawfully resident spouse or parents of the applicant. Hardship to the applicant or other family members is not directly relevant in section 212(i) proceedings and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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).

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The evidence of record includes, but is not limited to, counsel’s brief, birth and naturalization certificates for relatives, statements from the applicant’s husband and other family members, a psychologist’s report, and medical records for the applicant’s parents.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the applicant’s husband would not fare well in Colombia due to his age and health, and would face an uncertain life, including the possibility of suffering a heart attack. The record contains a psychological evaluation from [REDACTED]. As reported in the evaluation of the applicant’s spouse, dated December 15, 2005, the applicant’s spouse believes that he would be unable to relocate to Colombia with the applicant because of his health. [REDACTED] indicates that the applicant suffers from a serious heart condition and has been warned by his doctors he is at high risk of heart attack. Accordingly, the applicant’s spouse believes that he would risk his life if he moved

to Colombia. The applicant's spouse further informed [REDACTED] that he would have no residence in Colombia and would be unlikely to find work based on his age, lack of marketable skills and his inability to work in a physically stressful job.

While the AAO notes the claims made concerning health problems faced by the applicant's spouse, it does not find the record to provide evidence to support them. The record contains no statements from a licensed health care professional or other documentary evidence to establish the applicant's spouse suffers from a heart condition or how this condition affects his ability to function on a daily basis. Neither does the record document that the applicant's spouse would be unable to receive acceptable medical treatment in Colombia. 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 applicant has also submitted a copy of the section on Colombia from the Department of State Country Reports on Human Rights Practices – 2004, published February 28, 2005, which reports on violence and instability within Colombia's borders, and indicates that more than two million people may have been internally displaced as a result. The AAO observes that, on August 7, 2008, the Department of State issued a travel warning for Colombia, reporting that the potential for violence by terrorists and other criminal elements exists in all parts of the country. In light of the continuing country-wide security situation in Colombia, the AAO finds that relocating to Colombia would constitute an extreme hardship for the applicant's spouse.

To establish extreme hardship to the applicant's spouse if he were to remain in the United States without the applicant, counsel points to the previously noted psychological evaluation prepared by [REDACTED]. In her evaluation, [REDACTED] reports that the applicant's spouse does not know how he would cope if he were to be separated from the applicant. Moreover, [REDACTED] states that the applicant's spouse would worry about the applicant's well-being as she has health problems of her own and would be unable to find employment or housing. The applicant's spouse, according to [REDACTED] does not believe he would be able to survive the stress of the applicant's removal to Colombia. Based on her interview with the applicant's spouse, [REDACTED] also reports that the applicant's spouse is dependent on his daughter and son-in-law and that he would not be able to work to support the applicant in Colombia.

[REDACTED] concludes that the applicant's spouse would be at risk of developing Major Depressive Disorder and that, should his levels of stress and worry continue, he could face psychological problems that could affect his heart condition. She further notes that persons with heart disease are prone to depressive disorder as a result of changes in their physical abilities. [REDACTED] notes that the applicant's spouse has already experienced a pre-heart attack and that, although he is on medication to prevent a heart attack, he must also reduce his level of stress as a preventative measure. While the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] evaluation is based on a single interview with the applicant's spouse and relies heavily on a medical condition, the applicant's spouse's heart condition, that is not established by the record. The AAO, therefore, finds the evaluation's findings to be speculative in nature and of diminished value to a determination of extreme hardship.

Although the AAO notes the applicant's spouse's claims that he would be under great stress because the applicant suffers from her own medical problems and would be unable to find unemployment or housing in Colombia, the record, again, does not document these claims. The record contains no medical reports or statements to demonstrate that the applicant suffers from any health problem. Neither does it offer country conditions information on economic or housing conditions in Colombia as they relate to the applicant. *Matter of Soffici, supra*. Accordingly, the record does not establish that the applicant's situation upon removal to Colombia would be a source of stress for her spouse.

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 faces extreme hardship if she is refused admission to the United States.¹ The AAO recognizes that the applicant's husband will suffer emotionally as a result of the applicant's inadmissibility. However, the record does not demonstrate that the hardships he will face are distinguishable from the hardships normally associated with removal and, therefore, rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) 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) of the Act, the burden of proving eligibility rests 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.

¹ In a prior proceeding, the applicant asserted that the denial of her waiver application would result in extreme hardship to her elderly parents, but does not raise this claim in the current proceeding. While the AAO notes the evidence regarding the applicant's parents, the medical documents submitted are not sufficiently probative of her parent's medical conditions or their ability to function on a daily basis to reach a conclusion that the applicant's presence is necessary for their care. Therefore, the record does not establish that the applicant's parents would suffer extreme hardship based on her exclusion.