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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

COPY



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE: [Redacted] Office: BALTIMORE, MARYLAND

Date: APR 23 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 PETITIONER:

[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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who has resided in the United States since July 5, 2000, when she was admitted after presenting a fraudulent Bolivian passport and visitor's visa. She 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 having procured admission to the United State through fraud or misrepresentation. The applicant is married to a Lawful Permanent Resident and is the derivative beneficiary of an approved Petition for Alien Worker filed on behalf of her husband. The applicant 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 her spouse and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated March 1, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Service (USCIS) erred in determining that the applicant had not established extreme hardship to her Lawful Permanent Resident spouse and states that the documents submitted in support of the application "comply substantially with the legal requirements for a grant of a waiver." *See Counsel's Statement in Support of the Appeal* dated March 29, 2007. Specifically, counsel states that the decision fails to give proper weight to a psychological evaluation submitted in support of the application and discredits supporting affidavits submitted by the applicant. *See Counsel's Statement in Support of the Appeal*. In support of the waiver application and appeal counsel for the applicant submitted affidavits from the applicant and her husband, a psychological evaluation of the applicant and her spouse and daughter, letters in support of the waiver application, copies of the applicant's husband's permanent resident card and her daughter's birth certificate, a copy of the passport of the applicant's brother, and a report on conditions in Bolivia. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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 record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a forty-six year-old native and citizen of Bolivia who has resided in the United States since July 5, 2000, when she was admitted after presenting a fraudulent Bolivian passport and visitor's visa under the name [REDACTED]. The applicant married her husband, a forty-one year-old native and citizen of Bolivia and Lawful Permanent Resident, on September 24, 2004. The applicant and her husband reside in Gaithersburg, Maryland with their daughter.

Counsel asserts that the applicant's husband would suffer extreme hardship if he remained in the United States without the applicant because of the emotional effects of separation from the applicant. In support of this assertion counsel submitted a psychological evaluation of the applicant and her husband conducted on May 6, 2006. The evaluation states that the applicant's husband reported experiencing anxiety over the prospect of being separated from the applicant, and became tearful and visibly saddened when speaking about these fears. *Psychological Evaluation by [REDACTED], Psy.D.*, dated May 12, 2006, at 4. The evaluation states that the applicant's husband indicated that it would be "the end of [his] life" if the applicant were removed and he would feel completely alone and would be unable to raise their daughter on his own. *Id.* [REDACTED] states that the applicant and her husband are deeply committed to each other and he has found purpose and security in their marriage, and she concludes that her removal would result in "severe emotional consequences" for both her husband and daughter. *Id.* at 5-6. She further concludes that the applicant's husband is suffering from tremendous anxiety and it is likely that the applicant's removal would cause him to suffer a "significant reactive depression." *Id.* at 6.

The input of any mental health professional is respected and valued in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for anxiety or any other condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of severe anxiety in connection with the threat of the applicant's removal.

The evidence on the record is insufficient to establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Counsel for the applicant states that the supporting documents "comply substantially with the legal requirements for a grant of a waiver." The AAO notes, however, that aside from the psychological evaluation, the evidence submitted with the waiver application does not address potential hardship to the applicant's husband. As stated in the decision denying the waiver application, the affidavit prepared by the applicant discusses only the circumstance of her entry into United States using a fraudulent passport, and the letters submitted in support of the applicant discuss only her character and not the potential effects of her removal on her husband. Counsel also submitted a U.S. State

Department Background Note on Bolivia as additional evidence with the appeal, but neither counsel nor the applicant articulated a specific claim that the applicant's husband would suffer extreme hardship if he were to relocate to Bolivia with the applicant. No further information or documentation was submitted with the waiver application or appeal concerning the effects of relocating to Bolivia on the applicant's husband. 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)). Based on the documentation on the record, the applicant has not established that her husband would suffer extreme hardship in Bolivia.

Any hardship the applicant's husband would experience if she is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her Lawful Permanent Resident spouse as required under section 212(i) of the Act.

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. 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.