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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA

Date: **APR 30 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), 1182(h)

ON BEHALF OF PETITIONER:



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 El Salvador who first entered the United States in or around 1973. The applicant was convicted of petty theft in 1979, of burglary in 1985 and 1986, and of making a false claim to United States citizenship in 1989. The applicant is 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 to procure admission to the United State through fraud or misrepresentation.¹ The applicant also is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for his convictions for crimes involving moral turpitude. The applicant is married to a U.S. citizen, and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his spouse and oldest son.

The District Director, addressing the applicant's request for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), concluded that the applicant failed to establish extreme hardship to a qualifying relative, and denied the application. *See Decision of the District Director*, dated Feb. 15, 2007. The applicant did not request, and the District Director did not address, the applicant's eligibility for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

On appeal, the applicant, through counsel, asserts that the District Director should have granted a waiver under section 212(h)(1)(A) of the Act because his last conviction was more than 15 years ago, he has shown rehabilitation, and his admission would not be contrary to U.S. safety, security, or the national welfare. *See Brief in Support of Appeal*, dated Apr. 5, 2007. Alternatively, the applicant contends that the District Director erred in denying a waiver under section 212(h)(1)(B) because he established extreme hardship to his U.S. citizen spouse and son. *See id.*

In support of the appeal, the applicant submitted letters from his wife and son, a psychological evaluation of the applicant, his spouse and son, letters in support of the waiver application, and evidence that two of his convictions have been set aside or expunged. 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:

¹ Although the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act was not addressed by the District Director, the AAO maintains plenary power to review this appeal on a de novo basis. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the de novo authority of the AAO. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Additionally, there is no harm to the applicant because the proffered evidence regarding extreme hardship to his spouse is equally applicable to a waiver request under section 212(i) of the Act.

Misrepresentation

(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.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

Because section 212(a)(6)(C)(ii) only applies to false claims of citizenship on or after September 30, 1996, the applicant's inadmissibility will be analyzed under the general misrepresentation ground in section 212(a)(6)(C)(i). *See* Memo. from Joseph R. Greene, Acting Assoc. Commr., Office of Programs, Immig. and Naturalization Serv., *Section 212(a)(6)(C)(ii) Relating to False Claims to U.S. Citizenship* 2-3 (Apr. 8, 1998).

The record reflects that on January 16, 1989, the applicant "applied for entry at the San Ysidro Port of Entry, claiming United States citizenship to the Primary Inspector." *See Form I-213, Record of Deportable Alien*, dated Jan. 16, 1989. The applicant was charged with making a False Claim to U.S. Citizenship (Felony) under 18 U.S.C. § 911, and Disrupting the Performance of Official Duties (Misdemeanor), under 40 U.S.C. § 486(c) and 41 C.F.R. §§ 101-20.305 and 101-20.315. On January 17, 1989, the applicant pled guilty to the charges, and the United States District Court for the Southern District of California sentenced the applicant to 30 days of imprisonment. *See Record of Proceedings and Judgment*, dated Jan. 17, 1989. The applicant's false claim to U.S. citizenship was made to a U.S. government official, the misrepresentation was related to a material fact, and it was made to procure admission to the United States. Accordingly, the applicant is inadmissible for fraud or willful misrepresentation. *See* section 212(a)(6)(C)(i) of the Act.

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) 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 [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 . . .

A section 212(i) waiver of the bar to admission is dependent upon a showing that the bar imposes an extreme hardship on a qualifying family member. Extreme hardship to a qualifying family member must be established in the event that the family member remains in the United States without the applicant, and in the event that he or she accompanies the applicant to the home country. However, a qualifying relative is not required to reside outside of the United States based on a denial of an applicant's waiver request. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to the hardship the applicant's son would experience if the waiver application is denied. In contrast to the extreme hardship waiver provision in section 212(h) of the Act, hardship to an applicant's children is not a relevant factor to be considered in assessing extreme hardship under section 212(i) of the Act. Accordingly, hardship to the applicant's son will be considered only to the extent that this hardship affects the applicant's spouse.

The concept of extreme hardship "is not . . . fixed and inflexible," and the determination is 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 (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute 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 unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a 53-year-old native and citizen of El Salvador who has resided in the United States since 1973. The applicant and his wife [REDACTED], a 53-year-old native of Honduras and citizen of the United States, have been married for 14 years. See *Marriage Certificate* (indicating marriage on March 4, 1995). The applicant and his wife reside in Los Angeles, California. The applicant has a 26-year-old U.S. citizen son, [REDACTED], from a previous relationship. See *Psychosocial Report* by [REDACTED], dated Sept. 20, 1998. The applicant asserts that his wife would suffer extreme hardship if she remained in the United States without him because of the emotional effects of family separation. See *id.*; *Letter of [REDACTED]*, dated Mar. 26, 2007.

In support of this assertion the applicant submitted a letter from his wife, documenting the hardships [REDACTED] would suffer if he is required to leave the United States. *Letter of [REDACTED]*, *supra*. [REDACTED] states that they have a stable, successful, and interdependent marriage, and that the applicant is her “greatest source of emotional support,” and the love of her life. *Id.* As [REDACTED] confronts the medical challenges and mental decline of her elderly parents, she relies on the applicant’s “unconditional support,” as well as his caring, understanding, and ability to comfort her. *Id.* The applicant also “takes over [her] responsibilities when [she] can no longer handle things,” assisting [REDACTED] with her parents’ needs. *Id.* [REDACTED] fears that the applicant’s removal would cause a tremendous strain on the marriage, and the likely divorce would cause “irreparable emotional distress, pain, and suffering.” *Id.* The record also contains a 1998 psychological evaluation of the applicant and his wife and son. The evaluation states that the applicant’s wife showed “indications of anxiety relating to separation from a loved one,” and that she “fears the loss of [] the dimension of caring, giving and loving that [REDACTED] brings to their household.” *Psychosocial Report, supra*.

Given their long and supportive marriage, the applicant’s evidence regarding the emotional hardship to his wife as a result of family separation, is not minimal. Similarly, the input of a mental health professional is respected and valued in assessing a claim of emotional hardship. However, the evidence in the record does not appear to establish that the emotional difficulties the applicant’s wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse’s removal. For instance, the record does not reflect an ongoing relationship between a mental health professional and the applicant’s wife, or any history of

treatment for anxiety or any other condition. Additionally, the psychosocial report was prepared in 1998, nine years before the filing of the instant appeal, reducing the evidentiary value of this evidence. Although the distress caused by the prospect of being separated from one's 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 removal. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Additionally, the evidence does not show that the applicant's spouse would suffer significant economic detriment or medical concerns as a result of the denial of a waiver. *See Matter of O-J-O-*, 21 I&N Dec. at 383 (requiring consideration of the cumulative impact of hardships).

Addressing the possibility of moving to El Salvador, [REDACTED] states that she came to the United States from Honduras as a young child, and has spent the greater part of her life in the United States, where she is now a citizen. *Letter of [REDACTED] supra.* [REDACTED] elderly parents and her siblings reside in this country. *Id.* Additionally, [REDACTED] has built her professional career as a social worker in the United States, and she has been with the same employer for over 30 years. *Id.* She considers herself to be a member of the middle class, and intends to retire here. *Id.* Further, [REDACTED] questions what she would do in El Salvador. *Id.*

Given [REDACTED] equities in the United States, it appears that relocation to El Salvador could cause financial, professional and psychological difficulties for her. However, the applicant did not present specific evidence that the hardship his wife would face would be extreme. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998). Finally, as noted above, [REDACTED]. [REDACTED] would not be required to reside outside of the United States based on the denial of the applicant's waiver request.

In this case, the record does not contain sufficient evidence to show that any hardships faced by the applicant's wife, 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 his U.S. citizen spouse as required under section 212(i) of the Act. **Because the applicant has not established eligibility for a waiver for the fraud and misrepresentation ground of inadmissibility, no purpose would be served by considering whether the applicant is eligible for a waiver under section 212(h) of the Act for his convictions for crimes involving moral turpitude.**

In proceedings for an application for a waiver of the grounds of inadmissibility, 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.