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U.S. Citizenship
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AUG 12 2009

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

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 or reopen, 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 Acting District Director, Philadelphia, Pennsylvania and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who 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 into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and seeks 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 spouse.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated March 17, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) overlooked the findings of the psychological evaluation of the applicant's spouse. *Form I-290B, Notice of Appeal to the Administrative Appeals Office.*

In support of the waiver, the record includes, but is not limited to, a statement from the applicant; a statement from the applicant's spouse; a psychological evaluation of the applicant's spouse; Forms W-2 for the applicant's spouse; tax returns for the applicant and her spouse; a bank statement; and employment letters for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on May 29, 1999 the applicant was admitted to the United States on a passport and B-1 visa issued to another individual. *Form I-601, Application for Waiver of Ground of Excludability; Statement from the applicant*, dated January 23, 2006; *Copy of fraudulent visa*. Based on her presentation of these documents at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States 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 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's country of former nationality is Ecuador. *Naturalization certificate*. The applicant's spouse states that he cannot return to Ecuador as he has no family, no property, and only memories of physical and mental pain. *Statement from the applicant's spouse*, undated. A psychological evaluation of the applicant's spouse reports that, in 1988, the family of the applicant's spouse reportedly beat, kicked and berated him in Ecuador, causing multiple injuries. *Psychological evaluation by [REDACTED]*, dated January 14, 2006. What reportedly precipitated the attack was a dispute over whether the applicant's spouse was entitled to a certain percentage of family property based on his biological lineage. *Id.* As a result of the attack, the applicant's spouse reported symptoms consistent with Post Traumatic Stress Disorder. *Id.* At that time, he suffered a major depressive episode, including suicidal ideation and an unsuccessful suicide attempt. *Id.* He also reported difficulties with insomnia, nightmares, recurrent flashbacks, crying episodes, difficulty eating, and a pronounced sense of fear and anger toward his family. *Id.* These symptoms remained severe for approximately five years creating a chronic psychological disorder.

Id. He reportedly did not receive psychological treatment for this condition. *Id.* Currently, the applicant's spouse is visibly emotionally distressed and reported that he still has difficulty with nightmares and feels anger and resentment towards a family member. *Id.* He still suffers the effects of the trauma and continues to grieve the loss of his family of origin. *Id.* The applicant's spouse has no desire to return to Ecuador due to the incident with his family of origin. *Id.* He reported that he does not have a home in Ecuador, he does not have good relations with his family in Ecuador and there is nothing left for him there. *Id.* He has created a safe family environment with the applicant. *Id.* The couple depends on each other for support, survival and company. *Id.* The applicant's spouse has finally recreated for himself a safe and loving family. *Id.* This couple's attachment bond was made stronger by the applicant's spouse's alienation from his family of origin. *Id.* Upon removal of the applicant, the applicant's spouse would be at a high risk for a recurrence of a major depressive episode due to his previous condition upon the loss of his family of origin. *Id.*

The AAO notes that the psychological evaluation of the applicant's spouse focuses solely on the impact of separation on his mental health. The report does not consider how the applicant's spouse's mental/emotional status would be affected should he return to Ecuador with the applicant, particularly if he returned to a location other than his former residence. It addresses the issue of relocation by recounting the applicant's spouse's reasons why he does not wish to live in Ecuador. In that the report does not also evaluate how relocation would affect the applicant's spouse, it fails to establish that he would suffer extreme hardship as a result of the denial of her waiver application. Moreover, the AAO notes that the findings in the psychological evaluation are based on a single interview with the applicant's spouse and do not, therefore, reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering them speculative and of diminished value to a finding of extreme hardship.

As the evidence of record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he relocates to Ecuador, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(6)(C) 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(a)(6)(C) 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.