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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: TEGUCIGALPA, HONDURAS Date: AUG 24 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 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 Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Costa Rica who resided unlawfully in the United States from 1979 to 1986, when she returned to Costa Rica. She attempted to reenter the United States on December 5, 1991 as visitor for business, but withdrew her application for admission after being found inadmissible 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 obtained a visa through fraud or misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with her husband and children.

The field office 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 Field Office Director* dated March 30, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services ("USCIS") erred in focusing exclusively on hardship to the applicant's spouse and failing to consider hardship to their two adult children. *See Counsel's Statement in Support of Appeal* at 1. Counsel maintains that since the applicant is inadmissible for having willfully misrepresented a material fact in 1991, before section 212(i) of the Act entered into effect, USCIS should have applied former section 212(a)(19) of the Act, the waiver provision that existed in 1991, and considered hardship to the applicant's children as well as her husband. *Statement in Support of Appeal* at 2. Counsel contends that to apply section 212(i) of the Act as well as the 1999 decision of the Board of Immigration Appeal (BIA) in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), violates "a fundamental principle of American (and virtually universal) jurisprudence." *Id.* Counsel further states that the nature of the immigration violation in that case was more serious than in the present case because no false documents were used by the applicant. *Id.* Counsel asserts that it is a "bedrock principle of American justice . . . that punishment must fit the crime," and that fifteen years outside of the United States is more than sufficient punishment. *Statement in Support of Appeal* at 2-3. In support of the waiver application, counsel submitted an affidavit from the applicant's husband, letters from the applicant's children, identity documents and academic records for the applicant's children, copies of family photographs, receipts for money sent to the applicant in Costa Rica, and copies of correspondence between the applicant's husband and the applicant and their children while they resided in Costa Rica. 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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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 the record contains several references to the hardship that the applicant's children would suffer if the waiver application is denied. Although counsel asserts that the waiver provision in former section 212(a)(19) of the Act should be applied, this provision is no longer in effect and the applicant must establish that she qualifies for a waiver under current law. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. A request for an INA § 212(i) waiver of the Act is a request for prospective relief and, as such, its restrictions may be applied to conduct which predates passage of the current statute. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Section 212(i) of the Act provides that a waiver of inadmissibility is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress precluded hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 fifty-eight year-old native and citizen of Costa Rica who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for failing to disclose that she had unlawfully resided in the United States for seven years when applying for a nonimmigrant visa in 1991. The applicant's husband is a native of Colombia and citizen of the United States whom she married in 1992 and had previously been married to from 1980 to 1984. The applicant has resided in Costa Rica since 1986 and her husband and adult children reside in Homestead, Florida.

Counsel asserts that the applicant's husband is suffering extreme hardship due to being separated from the applicant. The applicant's husband states that he married the applicant in 1980, they resided together in the United States until their divorce in 1984, and the applicant later returned to Costa Rica. *See Affidavit of* [redacted] at 1-2. He further states that he remained in the United States after the applicant returned to Costa Rica in 1986 and with the exception of two years that he resided in Costa Rica with the applicant and their children in the 1990's, has continued to reside in the United States. *Affidavit of* [redacted] at 2-3. He states that his children, who lived in Costa Rica with the applicant until completing high school there, both traveled to the United States to attend college and remained in Florida. *Affidavit of* [redacted] at 3. He asserts that he is suffering emotional hardship because he has been separated from his wife for so long and was separated from his children while they grew up, and further claims that his children have also suffered emotional hardship due to separation from their father and now from their mother. *Affidavit of* [redacted] at 3-4. He additionally states that their "economic progress has also been challenged, having to keep up two separate homes for but one family." *Affidavit of* [redacted] at 4. The applicant's children, who are now twenty-seven and twenty-three years old, also state that they miss their mother and that their father is sad due to being separated for so many years from their mother. *See Letters from* [redacted] *and* [redacted]

Counsel asserts that the applicant's husband is experiencing emotional hardship as a result of separation from the applicant. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his concern over his separation from the applicant 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 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.

The applicant's husband also states that he is suffering financial hardship from having to maintain two households, but the record contains no documentation of his income or the family's expenses, and there is no evidence on the record to establish that the applicant is unable to find employment and support herself financially in Costa Rica. 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)). Further, even if the financial situation of the applicant's husband is negatively affected by having to provide financial support to the applicant in Costa Rica, there is no indication that such hardship rises to the level of extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The evidence on the record is insufficient to establish that any hardship the applicant's husband would experience if the applicant is denied admission to the United States is other than 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). No claim was made that the applicant's husband would suffer extreme hardship if he relocated to Costa Rica with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he moved to Costa Rica.

In this case, the record does not contain sufficient evidence to show that the 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 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 the applicant 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. 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.