



U.S. Citizenship
and Immigration
Services

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Office: NEWARK, NJ

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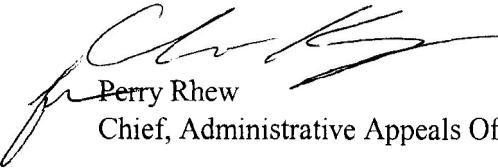
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. 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 with his wife and child in the United States.

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. *Decision of the District Director*, dated April 19, 2007.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on January 25, 2003; a copy of [REDACTED] naturalization certificate; a letter from [REDACTED] a letter from [REDACTED] physician; letters from the applicant's and [REDACTED] employers; a letter from [REDACTED] parents; tax documents; a copy of the applicant's residential lease; a copy of a deed for [REDACTED] a sworn statement by the applicant; copies of the couple's bank account statements; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 permanent resident spouse or parent of such an alien. . . .

The record shows, and the applicant admits, that he entered the United States in September 2000 using a fraudulent Spanish passport under the name of [REDACTED] *Sworn Statement by*

undated. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and willfully misrepresenting a material fact in order to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. See Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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).

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 under the Act. These factors include: 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.

In this case, the applicant's wife, [REDACTED] states that she and the applicant have a daughter who is one year and eight months old. [REDACTED] states they have very strong bonds and that her husband provides "invaluable emotional support to [their] family." In addition, [REDACTED] states that both she and her husband work to support their household. *Letter from* [REDACTED] dated January 11, 2006.

A letter from [REDACTED] physician, written in March 2004 before the couple's daughter was born, states that [REDACTED] had a fibroid in her uterus causing premature labor and excessive back pain. [REDACTED] physician recommended bed rest. *Letter from* [REDACTED] dated March 8, 2004; see also *Letter from* [REDACTED] and [REDACTED], dated March 9, 2004 ([REDACTED] parents state that they are worried about their daughter's health complications related to her pregnancy and contend that the baby will need both parents to grow up healthy and happy).

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] will endure hardship once the applicant departs the United States and is sympathetic to the family's circumstances. However, [REDACTED] does not discuss the possibility of moving back to Ecuador, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. Rather, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the

record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. See also *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

With respect to [REDACTED] financial hardship claim, there is insufficient evidence in the record to show that the level of hardship rises to extreme hardship. The record shows that [REDACTED] has been the primary income earner for the family, earning \$36,000 per year, plus \$10,800 in rental income on property she owns in her sole name. *Affidavit of Support Under Section 213A of the Act (Form I-864)* (stating [REDACTED] earned \$36,000 in 2002); *Letter from [REDACTED]*, dated February 27, 2003 (stating [REDACTED] earns \$36,000 per year); *2004 Supplemental Income and Loss (Schedule E, Form 1040)* (claiming \$10,800 in rents received for rental property located at [REDACTED]; *Deed Between [REDACTED] and [REDACTED] and [REDACTED]* recorded July 17, 2003 (transferring ownership to [REDACTED] for [REDACTED]). The record indicates [REDACTED] also owns property located at [REDACTED] in her sole name. See *Promissory Note*, dated March 17, 2005 (listing [REDACTED] as the sole borrower). Although a letter from the applicant's most recent employer does not specify the applicant's wages, the record indicates he had previously earned \$8 per hour. *Letter from [REDACTED]* dated January 9, 2006 (stating only that "[REDACTED] has been a service technician for [REDACTED] since 1-17-05."); *Letter from [REDACTED]* dated January 10, 2004 (stating the applicant earned \$8 per hour). In addition, the record does not contain sufficient information addressing the family's regular monthly expenses. Although documentation in the record indicates [REDACTED] monthly mortgage payment is \$2,775 for the property located on [REDACTED] the record also contains a copy of a lease in which the applicant agreed to pay \$800 per month in 2004 and 2005 for the property [REDACTED] owns on [REDACTED]. There are no copies of bills or other expenses, such as day care expenses, in the record. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [REDACTED] may be experiencing to the applicant's departure. In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

To the extent the record contains documentation about [REDACTED] medical problems during her pregnancy, the AAO notes that [REDACTED] makes no claim that she currently has any physical or medical problems. *Letter from [REDACTED] supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.