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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office: BALTIMORE, MD

Date: **FEB 05 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 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).

A handwritten signature in cursive script, appearing to read "John F. Grisson".

John F. Grisson, 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 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 entered the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident. She 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 husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on the qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 28, 2006.

On appeal, counsel contends that the applicant's spouse suffers from anxiety and depression. He asserts that the evidence previously submitted and that provided on appeal are proof of his spouse's deteriorating health and establish that denying the applicant's admission to the United States would result in extreme hardship to her spouse. *Form I-290B, Notice of Appeal*, dated July 19, 2006.

The record includes, but is not limited to, a statement from the applicant's spouse, dated October 11, 2005; a psychosocial assessment report from [REDACTED] LCSW-C, Psychiatric Social Worker dated October 18, 2005; a case report from [REDACTED], LCSW-C, Mental Health Therapist, dated July 17, 2006; the applicant's spouse's medical records of hospital treatment on July 10, 2006; and letters from brothers, sisters and friends of the couple. 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 the applicant at the time of her interview for adjustment of status testified that she used a fraudulent passport in the name of [REDACTED] to enter the United States in 1999. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212(i).

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. Hardship an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(i) waiver proceedings except to the extent that it results in hardship to a qualifying relative, in this case, the applicant's spouse. The only relevant hardship in the present case is hardship suffered by the applicant's husband.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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.

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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 extreme hardship to the applicant's spouse must be established whether he resides in Bolivia or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

Counsel contends that the applicant's spouse would suffer extreme emotional hardship if he remained in the United States following the applicant's removal. Counsel submits a statement from the applicant's spouse. In his statement, the applicant's spouse states that he considers his marriage

to be beautiful, honest, and most of all trusting; that he loves his wife dearly and she loves him; that they are very affectionate to each other; and that they do so many things together, such as going shopping, doing laundry, watching movies, dining out, visiting friends, and taking vacations together. He also states that he cannot imagine having to separate from the applicant; and that the thought of separating from her causes him emotional pain. He asserts that if he separates from her, he would lose a part of himself; that their separation will not permit him to enjoy life the way he does now; and that he will definitely change physically and emotionally. The applicant's spouse also asserts that he would be completely devastated and that he would lose the ability to fall in love again, because the applicant has taught him so many valuable things.

In support of counsel's assertion that the applicant's spouse would suffer extreme emotional hardship if he remained in the United States and the applicant were removed, counsel submitted a psychosocial assessment report dated October 18, 2005 from [REDACTED] a licensed psychiatric social worker. The report is based on a psychosocial assessment of the applicant's spouse, performed on October 1, 2005 and concludes that the applicant's spouse appears to be clinically stable but suffers a certain sadness; that he currently is suffering unresolved grief for his mother that appears to be blocking his emotions and causing him much sadness and emotional stress; that this may be why he has also become so dependent on the applicant; and that it would be a severe hardship for the applicant's spouse if his wife were to be removed.

On appeal, counsel submits a case report from [REDACTED], LCSW-C. Mental Health Therapist, dated July 17, 2006, with medical records for the applicant's spouse from July 10, 2006. The medical documents show that on July 10, 2006, the applicant's spouse visited Modern Primary Care, PA in Laurel, Maryland showing symptoms of depression and was sent to Laurel Regional Hospital Emergency Room, where he was treated by [REDACTED]. Dr. [REDACTED] describes the applicant's spouse as tearful and sad, and states that the applicant had been recently informed that his wife had been denied her green card and that he was unable to sleep at night. Dr. [REDACTED] instructed the applicant's spouse to call psychiatric referrals for an appointment within one to two days and also prescribed Ativan for anxiety. The applicant's spouse had the prescription filled with Lorazepam as a substitute on July 11, 2006.

On July 17, 2006, the applicant's spouse visited [REDACTED] as a follow-up to his July 10, 2006 hospital visit. [REDACTED] indicates that the applicant's spouse's physical health appears to be in steady decline due to lack of sleep, a state of anxiety and hyperarousal, and loss of appetite; that his emotional state has also deteriorated as compared to his previous psychological report to the point that he is barely able to keep his job. The therapist fears for the patient's wellbeing if his current state of anxiety and hyper arousal continue. She finds that due to the patient's history of childhood trauma and abandonment, he has forged a unique relationship with his wife, making him emotionally dependent on her for survival, and therefore, there is a very strong likelihood that if separated from his wife, the applicant's spouse will fall deeper into depression and lose his will to live.

The AAO is mindful of and sensitive to the applicant and her spouse's concerns about maintaining their family and the hardship the applicant's spouse would endure as a result of separation. Having carefully considered the evidence of record, the AAO finds the applicant to have established that her

spouse would suffer extreme emotional hardship in the event he remained in the United States following her removal.

However, as previously discussed, extreme hardship to the applicant's spouse must be established whether he resides in the United States or Bolivia. Even though the applicant has established that her spouse would suffer extreme hardship if he remained in the United States following her removal, she must also establish that he would suffer extreme hardship if he relocated to Bolivia with her. The AAO notes, however, that the issue of relocation and its impact on the applicant's spouse is not addressed by counsel or the applicant's spouse. Accordingly, the AAO is unable to determine that relocation to Bolivia would result in extreme hardship to the applicant's spouse.

In that the applicant has not established that her spouse would experience extreme hardship whether he relocates to Bolivia or remains in the United States, she has failed to establish eligibility for a waiver under section 212(i) of the Act. She is, therefore, statutorily ineligible for relief and 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)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.