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U.S. Citizenship
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Services

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 19 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 black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, § 1182(a)(6)(C)(i), for having attempted to enter 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 her husband and children in the United States.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated November 29, 2006.

On appeal, counsel contends the director failed to consider all of the evidence of hardship. In addition, counsel contends that the applicant's husband would suffer extreme hardship if he became a single parent and encloses two articles addressing single parenting and problems associated with daycare.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, Mr. ██████████, indicating that they were married on July 26, 1996; copies of the birth certificates of the couple's three U.S. citizen children; a letter from the applicant admitting she attempted to enter the United States in 1995 with a fraudulent visitor's visa; an affidavit from the applicant; an affidavit from ██████████; a copy of ██████████ naturalization certificate; a copy of the deed and mortgage statements for ██████████'s home; report cards and other documents from the couple's children's schools; pay stubs from the applicant's and ██████████ employers; three letters of support for the applicant; a letter from ██████████'s employer; a letter from the couple's bank; a copy of the applicant's passport; and an approved Immigrant 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) 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 she attempted to enter the United States in March of 1995 using a fraudulent passport in another person's name and that she lied to the immigration official about her identity. *Affidavit of* [REDACTED], dated September 26, 2006; *Application for Waiver of Grounds of Excludability (Form I-601)*, dated September 12, 2002; *Letter from* [REDACTED], dated September 12, 2002. The applicant was denied entry into the United States and sent back to Guatemala the same day. *Affidavit of* [REDACTED] *supra*. Three months later, in June of 1995, the applicant entered the United States without inspection. *Affidavit of* [REDACTED] *supra*; *Application for Waiver of Grounds of Excludability (Form I-601)*, *supra*; *Letter from* [REDACTED], *supra*. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) for fraud or 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). Hardship the applicant or her children experience upon deportation is not a permissible consideration under the statute. *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, [REDACTED] contends that "the financial, educational and personal problems that would result from a denial of [the applicant's] admission into the United States, when taken together, amount to extreme hardship." *Affidavit of* [REDACTED] dated September 26, 2006. [REDACTED] states that his wife "supported [their] son in his studies throughout elementary school which has been critical to his academic success," and that her help in education has been critical to their family. *Id.* [REDACTED] also states that his wife "assists [him] with [their] baby's everyday needs along with help from [him]self and [their] two other children." *Id.* The applicant states that she has

assisted her husband with the “daily activities normally associated with raising three children.” *Affidavit of [REDACTED], supra.* The applicant works for Merry Maids and the two pay stubs in the record indicate she earned \$310 and \$337 each pay period. *See Merry Maids Payroll Statements*, dated July 27, 2006, and August 12, 2006. The applicant further states that she and her husband bought a three family house in 2003, and that they live on the first floor while renting out the second and third floor apartments. *Affidavit of [REDACTED], supra.* The applicant states her sister-in-law rents the third apartment and that they have a very close relationship with her. *Id.* Copies of three receipts in the record from August of 2006 indicate rental income of \$350, \$750, and \$850. The applicant contends that the couple’s employment, rental income, and family relationships have allowed them to live comfortably. *Id.* The applicant also states that while she is working, her husband takes care of the children, and when her husband is working, she takes care of the children. *Id.*

After a careful review of the record, it is not evident that the applicant’s spouse would suffer extreme hardship as a result of the applicant’s waiver being denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of the applicant’s waiver application and is sympathetic to the family’s circumstances. However, there is insufficient evidence in the record to show that the level of hardship rises to the level of extreme hardship. With respect to financial hardship, the record indicates that the couple’s rental income amounts to \$1,950 per month, exceeding the monthly mortgage payment of \$1,414 per month.¹ [REDACTED] has worked at the same company since February of 1997 and earned \$1,924 during the month of January 2001. *Letter from [REDACTED] dated January 15, 2001; Earnings Statements for [REDACTED] January 2001.* Although there is evidence the applicant works, earning approximately \$600 per month, it is unclear from the record how many hours she works or how long she has been working. In 2001, on her Application to Register Permanent Resident or Adjust Status (Form I-485), the applicant indicated her occupation was “housewife.” *Application to Register Permanent Resident or Adjust Status (Form I-485)*, dated April 2, 2001. The record indicates that the applicant did not earn any income in 1999, and it is unclear whether she earned any income in 1998. *Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated February 3, 2001 (indicating [REDACTED] income was \$28,883 in 1999 and that the joint tax return the couple filed consisted solely of Mr. [REDACTED]’s income); *Printout of the Couple’s 1998 Tax Returns* (indicating their total income was \$22,167). Based on this record, there is insufficient evidence to show that the denial of the applicant’s waiver application would cause extreme financial hardship to [REDACTED]. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

¹ The AAO notes that the deed, dated in November of 2002, and mortgage loan appear solely in [REDACTED]’s name.

Regarding the care and educational support the applicant has provided for the couple's three children, the AAO recognizes the difficulties related to single parenthood and some of the problems associated with some day care settings. However, in this case, there is no allegation that the applicant is the only individual who could provide educational support to the couple's children and there is no allegation any of the children have any special needs. The applicant does not address whether other family members, including [REDACTED]'s sister who lives in the same house as the applicant and her husband, can assist with childcare. The applicant herself states that [REDACTED] cares for the children while she is working and states that she assists with the "daily activities normally associated with raising three children." *Affidavit of [REDACTED]*, *supra*. As such, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *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).

Significantly, [REDACTED] does not discuss the possibility of moving back to Guatemala, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Their situation, if [REDACTED] remains in the United States, is typical to 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. *See also Perez v. INS*, *supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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.