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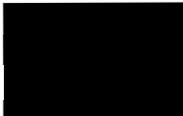
U.S. Citizenship
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FILE:



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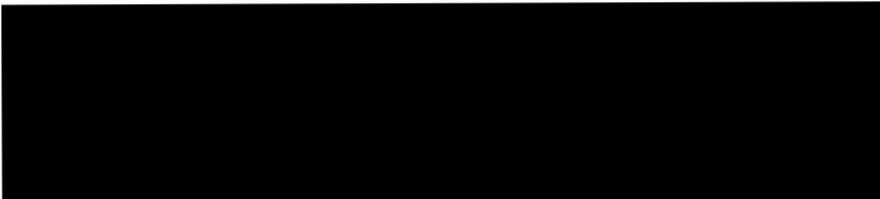
Applicant:



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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Hartford, Connecticut, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain an immigrant visa by claiming to be an unmarried child of a lawful permanent resident, when in actuality she was married. The record indicates that the applicant is the daughter of a lawful permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 mother and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated August 17, 2006.

On appeal, the applicant, through counsel, asserts that the District Director "did not consider all favorable factors in the aggregate." *Form I-290B*, filed September 15, 2006. Additionally, counsel contends that the decision was "in error...[and] [it] incorrectly states facts regarding the alien's son." *Id.*

The record includes, but is not limited to, counsel's letter, affidavits from the applicant's mother and son, and medical documents for the applicant's mother. 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, that:

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress did not include extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's mother.

In the present application, the record indicates that on October 16, 1979, the applicant's mother filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, claiming that the applicant was her unmarried child.¹ In 1985, the applicant entered the United States without inspection. On an unknown date after March 28, 1987², the applicant departed the United States. In 1991, the applicant reentered the United States without inspection. On December 11, 1997, the applicant's Form I-130 was approved. On June 15, 1984, the District Director, Vermont Service Center, revoked the applicant's approval of the Form I-130, finding that the applicant was married at the time that her mother filed the Form I-130. On May 15, 1991, the applicant's mother filed another Form I-130 on behalf of the applicant. On September 23, 1991, the applicant's Form I-130 was denied. On October 15, 1991, the applicant filed an appeal to the Board of Immigration Appeals (Board). The applicant's mother filed another Form I-130 on behalf of the applicant, which was approved on May 5, 1992. On June 4, 1992, the Board dismissed the appeal. On March 7, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On October 11, 2005, the applicant filed a Form I-601. On August 17, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative. On August 22, 2006, the District Director denied the applicant's Form I-485.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's mother. 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).

¹ The record establishes that the applicant was married in Ecuador on October 11, 1977

² The applicant's son was born on March 28, 1987, in Connecticut.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's mother will suffer extreme hardship if the applicant is removed to Ecuador. Counsel states that the applicant's mother "relies heavily on [the applicant]...to meet many of her needs." *Counsel's letter*, dated October 10, 2005. The applicant's mother states she "often stay[s] with [the applicant] because of [her] medical conditions." *Affidavit of* [REDACTED] [REDACTED] dated October 4, 2005. [REDACTED] states the applicant's mother suffers from various medical conditions, including "diabetes, vascular disease, severe degenerative arthritis of her knees, ankles and moderate pain to the arthritis of her feet... pulmonary (breathing) and chest pain...and heart disease." *Letter from* [REDACTED], dated September 29, 2005. [REDACTED] states the applicant is "needed to attend to her mother's medical problems. Specifically, she has to bring her mother to all her medical appointments." *Letter from* [REDACTED], dated September 29, 2005. Additionally, [REDACTED] states the applicant's mother is suffering from severe osteoarthritis and hypertension. "Due to the severity of her osteoarthritis, she has limited physical capability, and this constitutes the main reason as to why [the applicant] has been constantly assisting her mother for most daily activities." *Letter from* [REDACTED], *St. Vincent's Medical Center*, dated September 30, 2005. The AAO notes that there was no documentation submitted establishing that the applicant's mother could not receive treatment for her medical conditions in Ecuador or that she has to remain in the United States to receive her medical treatments. Further, the AAO notes that the applicant's mother is a native of Ecuador, who spent her formative years in Ecuador and she speaks Spanish. The applicant's mother states her grandson will suffer hardship if he has to return to Ecuador because "he would not have the employment opportunities available to him that he has in the United States." *Affidavit of* [REDACTED], *supra*; see also *counsel's letter, supra* ("He could not expect to find the employment and educational opportunities in Ecuador that he now has in the United States."). The AAO notes that the applicant's son was born in Ecuador, and there is no evidence that he would have difficulties rising to the level of extreme hardship in adjusting to the culture of Ecuador. The applicant's mother states the applicant provides financial assistance to her United States citizen son while he is attending college, and if she returns to Ecuador, she will not "find the employment opportunities which are available to her in the United States." *Affidavit of* [REDACTED], *supra*. The AAO notes that the applicant has been working in the United States for many years and it has not been established that she has no transferable skills that would aid her in obtaining a job in Ecuador to help with her son and mother's expenses. The AAO finds that the applicant failed to establish that her mother would suffer extreme hardship if she accompanies her to Ecuador.

In addition, counsel does not establish extreme hardship to the applicant's mother if she remains in the United States, with access to social security benefits and adequate health care. As a lawful permanent resident of the United States, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's mother states if she remains in the United States without the applicant "no one can care for [her] the way [the applicant] does." *Id.* The AAO notes that it has not been established that the applicant's mother will be unable to obtain help in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Further, beyond generalized assertions regarding country conditions in Ecuador, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the 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. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.