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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: OKLAHOMA CITY, OK

Date:

JAN 28 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 Officer-in-Charge, Oklahoma City, Oklahoma, 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 entered the United States as a B2 visitor for pleasure on August 19, 2005. She was found to be 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 and procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 spouse.

The officer-in-charge 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 Officer-in-Charge* dated September 5, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband cannot leave the United States because he is on probation after being released from federal prison in August 2005. *See Counsel's Statement in Support of Appeal* at 1. Counsel states that existing case law addressing whether a qualifying relative would face hardship in a foreign country is not relevant in analyzing extreme hardship in the present case, since the applicant's husband may not leave the United States. *Counsel's Statement* at 3. Counsel states that denial of the waiver will force the applicant and her husband to be physically apart until August 2009, when the applicant's husband's term of supervised release will end and he can return to Guatemala, where he previously resided with the applicant. *Id.* Counsel states that four years of separation would amount to extreme hardship and cites *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) to support the assertion that a central purpose of the waiver is the unification of families. *Id.* In support of the waiver application and appeal, counsel submitted a letter from the applicant's husband's probation officer, documentation concerning his release from the Federal Bureau of Prisons, affidavits from the applicant and her husband, and letters from relatives and friends in support of the waiver application. 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 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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

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-one year-old native and citizen of Guatemala who has resided in the United States since August 19, 2005, when she entered as a B2 visitor for pleasure. The applicant married her husband, a fifty-three year-old native and citizen of the United States, on August 25, 2006 in Wilburton, Oklahoma. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act because she failed to disclose that she was planning on residing with her current husband, with whom she resided in Guatemala for ten years and who is the father of her child, during her stay in the United States. Further, the applicant married her husband less than a week after arriving in the United States and applied for adjustment

of status soon after that, and was therefore found to have falsely stated that she intended to remain in the United States for three weeks to work as a domestic employee. The applicant and her husband currently reside in Wilburton, Oklahoma.

Counsel for the applicant asserts that being separated from the applicant for a period of four years would amount to extreme hardship. The applicant states that she loves her husband, and it caused her much grief and pain to be separated from him while he served a prison sentence for a drug trafficking conviction from 1999 to 2005. *See Affidavit of [REDACTED] dated April 3, 2006.*

Counsel for the applicant states that the applicant's husband would experience emotional hardship due to separation from the applicant until he is free to return to Guatemala, but there is no evidence provided concerning his mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over being separated from his wife 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 removal or exclusion. The prospect of separation or involuntary relocation nearly 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 further states that he and the applicant plan on returning to Guatemala as soon as he completes his probation. *See Affidavit of [REDACTED] dated April 3, 2006.* He and the applicant both state that they own a business in Guatemala, and documentation on the record indicates that they own a guest house and also served as guides for tourists who stay in the guest house. *See letters in support of waiver application; website for [REDACTED]*

Guatemala. The record indicates that the applicant's husband resided in Guatemala for several years and intends to return there and operate the business he owns with the applicant. The record further indicates that the applicant's husband's term of probation ends four years after his August 2005 release from prison, in August 2009. No claim has been made and the applicant has not established that her husband would suffer extreme hardship if he relocates to Guatemala.

The emotional hardship the applicant's husband is experiencing appears to be 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).

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.

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.