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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (PANAMA CITY, PANAMA) Date: **JAN 29 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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. **The appeal will be dismissed.**

The applicant, Ms. Maribel Quintero-Ruiz, is a native and citizen of Columbia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation; and to section 212(a)(6)(B), 8 U.S.C. § 1182(a)(6)(B), failure to attend removal proceedings.

The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to join her naturalized citizen spouse in the United States. The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 4, 2006. The applicant submitted a timely appeal.

On appeal, counsel states that separation has caused irreversible psychological damage to the applicant's spouse and son. Counsel notes that the applicant's I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal was granted on October 27, 2005. Counsel asserts that because the government withdrew the applicant's admission into the United States and dropped the charges that appeared on the Notice to Appear a waiver application is not needed. Counsel states that the applicant's spouse's affidavit explains the extreme hardship he and his son Alex have suffered since the applicant left the United States. Counsel states that both the applicant and her youngest son were diagnosed with anxiety and depression and that the applicant's husband's financial situation is worsening every day in supporting his wife and son in Columbia.

The AAO will now consider the finding of inadmissibility under section 212(a)(6)(C) of the Act, which 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.

The record reflects that the applicant sought entry into the United States from Curacao on March 9, 2002, by presenting to an immigration inspector an altered Columbian passport and visa for which she paid \$3,500. During secondary inspection, the applicant admitted to using the altered documents to gain admission into the United States. Based upon these facts, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel's assertion that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because the government dropped the misrepresentation charges is not persuasive. Even though the immigration judge's order stated that the government is not pursuing section 212(a)(6)(C) of the Act, the applicant still must be admissible to the United States. The judge's finding applied only to the

removal proceedings, not to the overall issue of inadmissibility. The judge's order noted that the Department of Homeland Security was *not pursuing the charges under 212(a)(6)(C)*. This was done in order to allow her to withdraw her request for admission, which the judge granted. The fact that she attempted to enter the United States by fraud was not altered. Admissibility is defined by section 212 of the Act, 8 U.S.C. § 1182. The record clearly establishes that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors, which relate to the applicant's qualifying relative, 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381,

383 (BIA 1996). The entire range of factors concerning hardship must be considered in their totality, and then the trier of fact must “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Submitted in support of the waiver application are the following: affidavits by the applicant’s spouse; an affidavit and an affirmation by the applicant; a psychological report dated June 1, 2007, and two psychological evaluations, dated October 23, 2006, and June 23, 2005, by [REDACTED], a psychologist; documents by Santa Monica Hospital; a psychological evaluation dated June 3, 2007, by [REDACTED], a clinical psychologist; affidavits by friends of the applicant’s husband; an affidavit by the applicant’s sister-in-law; letters by [REDACTED], a psychotherapist; currency transaction receipts; an employment letter; an Amnesty International report on human rights in Columbia; a press release by Inter-American Commission on Human Rights; and translations of some documents into the English language.

In his affidavit dated November 1, 2006, the applicant’s spouse conveys that since his wife and son, [REDACTED] left the United States he has had extreme financial, physical, and emotional and psychological hardship. He states that he is depressed, especially when he hears that [REDACTED] his son whom he has been separated from for one year and seven months, has anxiety because of their separation. He conveys that the psychotherapist states that whenever he visits [REDACTED] and returns to the United States, [REDACTED]’s condition gets worse. The applicant’s spouse indicates that he worries about the safety of his wife and son in Columbia. He states that his daughter from a previous marriage has emotional problems due to his family troubles. He conveys that he pays child support for his two U.S. citizen from a prior marriage and providing his wife and son with \$1,000 a month affects him economically; he indicates that his wife and son are not covered by his health insurance. He states that he pays the mortgage for his house, supports his parents, and travels to Columbia at least twice a year. He states that emotionally it has been hard for him and that he has been distant from his two children in the United States, who complain that he does not pay attention to them. He states that he will not live in Columbia because that would mean leaving his children in the United States, who he needs to help emotionally and financially. He states that his ulcer has worsened.

The psychological evaluation dated June 23, 2005, by [REDACTED] states that A [REDACTED], who was two years and four months old at the time, is diagnosed with psycho affective deprivation (for absence of a parental figure), adaptation upheaval with anxious-depressive mood. She states that two sessions of evaluation and five of intervention have been conducted.

The psychological evaluation dated October 23, 2006, by [REDACTED] states that since May 2, 2005, [REDACTED] has been diagnosed with psycho affective deprivation and depressive adaptation disorder-anxious. She indicates that he has improved with treatment but shows signs of clinical deterioration following his father’s visits. She states that the treatments conducted were lucid psychotherapy (2 sessions a month) and family psycho orientation for strengthening his affective ties.

[REDACTED] psychological report dated June 1, 2007, conveys that [REDACTED] since May 2, 2005, has participated on a regular basis in a lucid psychotherapy treatment, and that his mother participated in

a psychotherapeutic support and psycho orientation for daily support of her children. She states that [REDACTED]'s initial diagnosis was psycho affective deprivation and an adaptive disorder with symptoms of depression and anxiety. Her report indicates that [REDACTED] has symptoms of depressive conduct which requires consultation with a specialist in child psychiatry.

The evaluation by [REDACTED] states that the applicant has for approximately four months had increased symptoms of depression which are weight loss, decreased activity, lack of appetite and insomnia, hair loss, and reoccurrence of tonsillitis and other illnesses for which she is receiving medical treatment and anti-stress medications and anti-depressants. She states that the applicant's depression is in advanced states, caused by family disintegration and uncertainty about the future.

The document by Santa Monica Hospital pertaining to four-year-old [REDACTED] conveys that he has not been in contact with his father for four month and the absence has resulted in a state of constant depression, crying, and regressive behavior.

The document by Santa Monica Hospital concerning the applicant conveys that she has not had contact with her husband for six months and has constant depression, crying, insomnia, and loss of weight and hair.

The letters by the applicant's husband's friends and his sister convey that the applicant's husband has been noticeably depressed since his separation from his wife and child. In addition, the letter dated February 9, 2005, by [REDACTED], states that the applicant's husband is not able to care for [REDACTED] by himself because of the long hours he works (he does not get out of work until 11:00 P.M.), and his letter dated February 4, 2006, conveys that the stress of separation has caused the applicant's husband to have a drop in his attendance at work, which could jeopardize his job. Mr. [REDACTED] indicates that he is a custodian and a co-worker of the applicant's husband, who is also a custodian, and who was transferred and promoted in September 2005 to work in the same building as he.

The letter dated October 28, 2006, by [REDACTED] conveys that the applicant's husband continues to be significantly impacted by separation from his family. [REDACTED] states that [REDACTED], the applicant's sixteen-year-old step-daughter, has serious emotional problems that require home schooling and he has been working with her since June to cope with "her father's unavailability in the last couple of years, secondary to his depression." He states that Cindy's already marginal functioning is likely to be affected if her father moves to Columbia. He indicates that the applicant's step-son is beginning to show signs of disruptive anxiety.

[REDACTED]'s letter dated July 12, 2005, states that the applicant's husband has been his patient and that he is treating him for Major Depression. He states that since the end of March the applicant's husband has had vegetative symptoms of depression directly related to separation from his wife and son. He states that the applicant is at risk of losing his job as a result of depression and has had warnings for his sudden difficulties with attendance, irritability, and lack of productivity. He states that the applicant's husband's diagnosis is major depression and that he is currently taking Paxil for

depression and takes sleep medication. He states that prior to the family's move to Columbia, the applicant had been at home with [REDACTED] during the day and involved in his daily care.

In an affidavit the applicant states that her son and husband have symptoms of depression caused by separation. She conveys that her husband and son would not adjust to life in Columbia and that they might be kidnapped because they are U.S. citizens, that her son's education would suffer in Columbia and that his infections, due to Columbia's climate, food, and water, would continue. She states that it is impossible for her to obtain employment in Columbia as a 35 year old.

The employment letter by Rye City School District states that the applicant's husband has been employed there since September 16, 1999, that he is a cleaner, and his annual salary is \$43,290.

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Columbia. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Family separation must be considered in determining hardship to the applicant's husband if he were to remain in the country without the applicant. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

In light of the evidence showing that the applicant's husband has been diagnosed with and treated for major depression caused by his son and wife living in Columbia, the AAO finds that the applicant's husband would continue to experience extreme emotional hardship if he remained in the United States without his spouse.

The documentation in the record is not sufficient to establish that the applicant's husband would experience extreme hardship if he were to join his wife to live in Columbia. The applicant's husband indicates that he provides child support for a son and daughter living in the United States; however, there is no documentation in the record of this or of how long he must provide child support. [REDACTED] indicates that the applicant's daughter has serious emotional problems, but he does not describe the nature of her emotional problems or how her condition impacts her father. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The conditions in the country where the applicant's husband would live if he joined his wife are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). The AAO notes that there is no documentation to establish that the applicant or her husband would be unable to obtain employment in Columbia. Furthermore, difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec.

627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978) (“It has long been clear that the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship.”) (citation omitted).

Although kidnappings have occurred in Columbia, as shown by the U.S. State Department Consular Information Sheet, and violence has also occurred there, as shown in the Amnesty International Report and Inter-American Commission on Human Rights press release, the applicant has not demonstrated why her husband or son would be a target of kidnapping or violence.

With regard to the education of her son in Columbia, in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), the court upheld the BIA’s finding that the disadvantage of reduced educational opportunities for a child is insufficient to establish extreme hardship. The applicant has not explained why her son infections would result in extreme hardship to her husband.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions has not been met so as to warrant a finding of extreme hardship in the event that the applicant’s husband were to join her in Columbia. Having carefully considered each of the hardship factors raised both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

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(i), the burden of establishing that the application merits approval 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 denied.

ORDER: The appeal is dismissed. The waiver application is denied.