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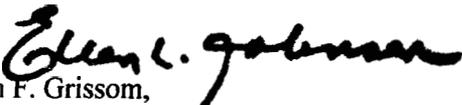
Applicant:

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.


John F. Grissom,
Acting Chief Administrative Appeals Office

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

The applicant, [REDACTED] 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.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The district director concluded that the applicant had failed to establish that this 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 March 21, 2007. The applicant submitted a timely appeal.

On appeal, counsel states that the applicant's husband would experience extreme hardship if the waiver application were denied because the applicant was his girlfriend for 20 years. Counsel states that the applicant could have adjusted status if everything were done properly; her husband could have petitioned for her after he became a United States citizen. Counsel indicates that the applicant wished to surprise her husband and used a fraudulent passport to enter the country. He states that she could have entered legally as a fiancé on a K visa. Counsel asserts that this is not a case where the individual would have been otherwise unable to apply for benefits under the Act.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that on November 20, 2004, the applicant entered the United States using a tourist visa in someone else's name and date of birth. Based on the documentation in the record, the applicant is inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, her identity, in order to procure admission into the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states 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 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 will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "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).

Extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without her, 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.

In his affidavit the applicant's husband states that he cannot imagine life in Columbia if he moves there; nor can he imagine choosing between his family in the United States and his wife in Columbia. He states that his parents and grandparent and two of his three siblings live in the United States, and that his other brother is being petitioned by his father and will come to the United States soon. He states that he lives near his family members. The applicant's brother-in-law conveys in his affidavit dated March 6, 2006, that he was the best man at his brother's wedding and his brother and the applicant live about five minutes away from his house. He states that his brother loved the applicant since he was a boy and that her having to leave would make his life extremely difficult because he would have to choose between his wife in Columbia and his family in the United States.

Courts have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)).

The applicant’s husband is very concerned about separation from his wife, as expressed in his and his brother’s affidavits. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that the situation of the applicant’s husband, if he remains in the United States without his wife, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by the applicant’s husband is unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra*.

The applicant’s husband conveys that he would be separated from his family members in the United States if he moved to Columbia. Courts in the United States have held that separation from one’s family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. In *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA’s finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner “is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child.” The record before the AAO is insufficient to show that the emotional hardship that will be endured by the applicant’s husband if he is separated from his family members in the United States is unusual or beyond that which is normally to be expected upon removal.

The applicant’s husband states that he cannot imagine life in Columbia. However, his statement is not specific as to the hardship, if any, that he would experience if he were to live in Columbia.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a

finding of extreme hardship. 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 212(i) of the Act, 8 U.S.C. § 1182(i).

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) 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.