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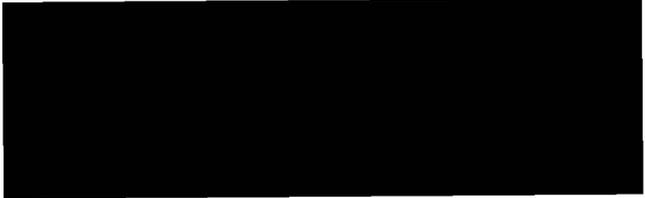
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: PHILADELPHIA

Date: MAR 18 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:



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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States 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 procured admission to the United States through fraud or misrepresentation. 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 husband.

The district director 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 District Director* dated August 13, 1999.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application because the applicant demonstrated that her husband would suffer extreme emotional and financial hardship. Specifically, counsel states that the applicant's husband is receiving Supplemental Security Income (SSI) due to a mental disability. In support of the waiver application and appeal, counsel submitted medical records for the applicant's husband, a letter from a physician evaluating the applicant's husband's psychiatric condition, and letters from the applicant and her husband. On October 15, 2008, the AAO requested that the applicant's attorney provide a current address for the applicant and a statement from the applicant as to whether she was still residing with her husband. This request for evidence indicated that any response must be received by the AAO within twelve weeks, and as of the date of this decision no additional documentation has been received. 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 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.

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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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.

The record reflects that the applicant is a forty-eight year-old native and citizen of Ecuador who was admitted to the United States in April 1996 as a visitor for pleasure after presenting a fraudulent passport and visitor's visa under the name of [REDACTED]. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. The record further reflects that the applicant's husband is a thirty-four year-old native and citizen of the United States. As of the date the appeal was filed, the applicant and her husband were residing in Upper Darby, Pennsylvania.

Counsel for the applicant asserts that if the applicant is refused admission to the United States, her husband will experience extreme hardship due to the fact that he suffers from a mental disability. In support of this assertion counsel submitted a letter from [REDACTED] of the Center for Emotional Fitness dated October 4, 1999. This letter indicates that the applicant's husband is receiving Social Security Disability for psychiatric reasons and has been hospitalized several times as a result of a severe anxiety disorder. See letter from [REDACTED] dated October 4, 1999. The letter further states that the applicant's husband has refused treatment for his condition, possibly due to side-effects from medication he has been prescribed in the past. *Id.* According to [REDACTED], the applicant's husband reports that "he has viewed his relationship with his wife as

healing” and feels that the relationship is nurturing and has allowed him to become healthier. *Id.* [REDACTED] states that based on his history of Social Anxiety Disorder and depression, the applicant’s husband’s mental state will deteriorate without the applicant's support, and he recommends treatment and a follow-up visit for the applicant.

The input of any mental health professional is respected and valued in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant’s spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant’s husband. Further, there is no evidence of any ongoing treatment for any psychological condition despite the recommendation of [REDACTED] that the applicant’s husband receive such treatment. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight commensurate with an established relationship with a mental health professional. This renders the doctor’s findings speculative and diminishes the evaluation’s value to a determination of extreme hardship.

A letter from the applicant’s husband states that the applicant has brought meaning to his life and has provided tremendous emotional support. *See letter from [REDACTED] dated February 1, 1999.* The evidence on the record is insufficient, however, to establish that the emotional effects of being separated from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with his spouse’s deportation or exclusion. Although the depth of his distress over the prospect of being separated from his spouse is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation 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.

Counsel also submitted medical records for the applicant’s husband including progress notes from his physical dating from 1988 to 1999, a laboratory report for tests conducted in March 1995, and a radiology report related to an unknown condition dated March 8, 1993. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant’s husband suffers from any serious medical condition that would cause him to suffer extreme hardship if the applicant were removed from the United States. The records consist of handwritten progress notes from the applicant’s husband’s physician that are almost entirely illegible and laboratory and radiology reports containing no explanation of the meaning of the results or the reason the tests were ordered. The record contains no other information about the applicant’s husband’s medical or psychiatric condition, such as a detailed letter from a treating physician or psychiatrist explaining the nature and long-term prognosis of the condition, any treatment or medication prescribed, and the type of assistance that family members would need to provide. Without more detailed information, the

AAO is not in a position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

The applicant's husband states that the applicant is his only financial support. *See letter from* [REDACTED] [REDACTED] dated February 1, 1999. Counsel has also indicated that the applicant's husband received SSI payments because of his mental disability, but no documentation was submitted to support this assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence is insufficient to establish that the applicant's husband is unable to support himself such that the applicant's removal would cause financial hardship beyond what would normally be expected as a result of the applicant's exclusion. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial difficulties that the applicant's husband would experience if she is removed appear to be the type of hardships that family members 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.