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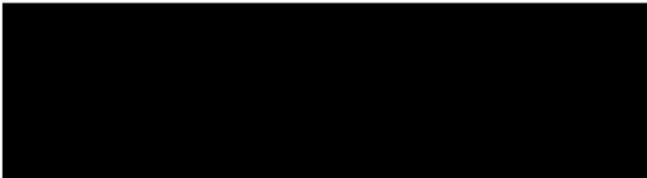
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE:



Office: MIAMI (TAMPA)

Date:

MAR 31 2009

IN RE:



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

The applicant is a native and citizen of Argentina 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 sought to obtain an immigration benefit through fraud or misrepresentation of a material fact. The applicant is married to a Lawful Permanent Resident who is a native and citizen of Cuba and she has applied for Adjustment of Status under the Cuban Adjustment Act. She 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 district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. The director further found the applicant subject to section 204(c) of the Act as an alien who entered into a marriage solely for the purpose of evading immigration laws. *See decision of the District Director* dated June 2, 2008.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in failing to consider evidence submitted with the waiver application that establishes that the applicant’s husband would experience extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant’s husband has established he would suffer psychological hardship if he is separated from the applicant, and USCIS erred in failing to consider evidence documenting the close marital relationship between the applicant and her husband. *Brief in Support of Appeal* at 4. Counsel additionally asserts that neither the applicant nor her husband would be able to obtain employment in Argentina because conditions there are not good at the present time, and he requests that USCIS take judicial notice of the State Department Reports on Country Conditions for Argentina. *Brief* at 4. Counsel further states that due to a housing crisis in Florida, the applicant’s husband would be unable to sell his home and relocate to Argentina without experiencing financial hardship. *Id.* Counsel also asserts that USCIS erred in continuing to rely on section 204(c) of the Act, 8 U.S.C. § 1154(c), as the primary basis for denial of the waiver application, as this provision only applies to applicants seeking status based on a petition filed under section 204 of the Act. *Brief* at 2. In support of the waiver application and appeal, counsel submitted the following documentation: letters from a psychologist who evaluated the applicant’s husband, declarations from the applicant and her husband, a letter from a physician concerning a disability of the mother of the applicant’s stepchildren, and letters from friends and family members in support of the waiver application. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 204(c) of the Act states:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of

evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The AAO finds counsel's assertions regarding the application of section 204(c) of the Act to this applicant to be persuasive. The clear language of section 204(c) states that it applies to petitions, not to applications as is the case with applicants for adjustment of status under the Cuban Adjustment Act. As there is no petition involved in this case, the AAO finds that the applicant is not subject to section 204(c) of the Act. She is still, however, inadmissible under section 212(a)(6)(C) of the Act for fraud.

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.

The record contains references to hardship the applicant's children would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 thirty-two year-old native and citizen of Argentina. She has resided in the United States since June 2000, when she was paroled for a period of ninety days through the visa waiver pilot program. She married her husband, a thirty year-old native and citizen of the Cuba and Lawful Permanent Resident, on April 1, 2006. They reside together in Tampa, Florida with their five children from previous relationships.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's husband if she were removed from the United States. The record contains letters from a psychologist who has evaluated the applicant's husband and diagnosed him with depression. An evaluation dated December 28, 2007 states that the applicant's husband was suffering from depression as a result of the applicant's detention by Immigration and Customs Enforcement (ICE) that has caused him to cry frequently and have difficulty sleeping and eating, and has impaired his ability to work as a truck driver and care for his two children and three stepchildren. *See Psychological Evaluation by [REDACTED]*, dated December 28, 2007. A subsequent letter from [REDACTED] states that the applicant's husband's condition has worsened, and he is having nightmares and has become extremely angry. *Letter from [REDACTED]*, dated June 11, 2008. The letter states that the applicant's husband lives in constant fear that immigration authorities are going to arrive at their house and "take his wife," and he is having suicidal thoughts. *Id.* [REDACTED] further states,

He is going to have to undergo continued therapy in order to attempt to ameliorate this situation. The depression is so deep that medication alone is not going to be the answer. I feel that this situation may not have a good ending.

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 letters from the psychologist who evaluated the applicant's spouse indicate that as a result of the applicant's prior detention and possible deportation, her husband began experiencing symptoms of severe depression and anxiety. The evidence on the record establishes that the applicant's husband's condition is serious and that he would suffer extreme hardship if he is separated from the applicant. Further, the psychologist states that the applicant's husband was also having suicidal thoughts. It appears that the depression the applicant's husband is experiencing is unusual or beyond that which would normally be expected upon his spouse's deportation or exclusion. In light of his psychological condition, the emotional hardship to the applicant's husband that would result from being separated from the applicant, combined with the effects of any hardship to his children resulting from being separated from their stepmother and any financial hardship due to the loss of the applicant's income, amounts to extreme hardship if he remains in the United States.

Counsel asserts that the applicant's husband would suffer financial hardship if he relocated to Argentina with the applicant because of poor conditions there and difficulty he would have in selling his home in Florida. The AAO notes that no documentation was submitted concerning conditions in Argentina, nor was any specific information provided concerning the particular circumstances of the present case, such as where the applicant would relocate and whether she has any family in Argentina, that would support a claim that the applicant's husband would suffer hardship if he relocated to Argentina. Counsel also failed to submit documentation to support the assertion that the applicant's husband owns a home and would be unable to sell it if he were to relocate to Argentina. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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).

In this case, the record does not contain sufficient evidence to show that the qualifying relative would suffer hardship if he relocated to Argentina that would 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.