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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CHICAGO (MILWAUKEE, WI)

Date MAY 01 2009

IN RE:

Applicant:

APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 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, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Costa Rica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining fraudulent Costa Rican entry stamps; and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated January 11, 2007.

On appeal, the applicant, through counsel, contends that the "decision in this case consists of 'boiler plate' language and does not reference any of the facts particular to this case." *Form I-290B*, filed February 9, 2007.

The record includes, but is not limited to, counsel's brief; letters from the applicant and his wife; and the applicant's marriage certificate. 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, that:

- (i) In general.-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.
- ....
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) 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 [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...

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
  - .....
  - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
  
- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that on October 22, 1998, the applicant entered the United States on a B-2 nonimmigrant visa. The applicant obtained a false Costa Rican entry stamp indicating that the applicant reentered Costa Rica on November 12, 1998. However, the applicant testified to departing the United States approximately 6 months after his October 22, 1998 entry.<sup>1</sup> On June 2, 2000, the applicant entered the United States on a B-2 nonimmigrant visa. The applicant obtained another false Costa Rican entry stamp indicating that the applicant reentered Costa Rica on June 20, 2000. However, the applicant testified that he has not departed the United States since his June 2, 2000 entry. On July 24, 2006, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an *Application to Register Permanent Residence or Adjust Status* (Form I-485) and a Form I-601. On January 10, 2007, the applicant's Form I-130 was approved. On January 11, 2007, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his spouse.

The AAO notes that counsel does not dispute the fact that the applicant obtained false Costa Rican entry stamps in order to unlawfully remain in the United States. Additionally, the AAO finds that the

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<sup>1</sup> The AAO notes that if the applicant had only stayed in the United States for 6 months then he would not have needed to obtain a false Costa Rican entry stamp since his B-2 nonimmigrant visa authorized him to remain in the United States for 6 months.

applicant willfully misrepresented a material fact on his second nonimmigrant visa application, when he failed to indicate that he obtained the November 12, 1998 false Costa Rican entry stamp. The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that she be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C-*, *supra*. Had the applicant mentioned that he had obtained a false Costa Rican entry stamp, his application for a nonimmigrant visa may have been denied on the basis that he overstayed his initial entry into the United States. Therefore, the applicant's misrepresentation to the period in which he stayed in the United States and not being able to establish that his stay was entirely authorized, is a material misrepresentation and he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

However, the AAO does not find the applicant to be inadmissible under section 212(a)(9)(B)(II) of the Act. The AAO notes that the applicant accrued unlawful presence from December 2, 2000, the date the applicant's authorization to remain in the United States expired, until July 24, 2006, the date the applicant filed his Form I-485. However, there is no evidence in the record that the applicant has departed the United States since his legal entry on June 2, 2000.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(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 himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's wife states she will suffer hardship if the applicant is removed to Costa Rica. *See letter from [REDACTED]*, dated October 27, 2006. The applicant's wife claims that if she moved to

Costa Rica, her standard of living would be lower and it would be difficult to obtain employment. *Id.* The AAO notes that the applicant's wife is college educated and speaks Spanish, and it has not established she has no transferable skills that would aid her in obtaining a job in Costa Rica. The applicant's wife states she has "continuous problems with allergies and skin sensitivity and rashes." *Id.* The AAO notes that the applicant's wife resided in Costa Rica from January 2006 to December 2006, and there is no evidence in the record establishing that she suffered from any medical conditions while residing in Costa Rica. Additionally, there is no evidence in the record establishing that the applicant's wife could not receive treatment for her medical conditions in Costa Rica or that she has to remain in the United States to receive medical treatments. Furthermore, the AAO notes the applicant's wife owns property in Costa Rica. *See letter from applicant*, dated October 27, 2006. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanies him to Costa Rica.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, continuing her schooling and in close proximity to her family. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states she plans on pursuing a graduate degree and the applicant will be the primary wage earner for the family while she attends school. *See letter from [REDACTED]*, *supra*. The AAO notes that the record fails to demonstrate that the applicant cannot obtain employment in Costa Rica, or that he will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly 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 Board 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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, supra*, the Ninth Circuit Court of Appeals held further 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. The AAO recognizes that the applicant's United States citizen spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.