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

H2

FILE: [REDACTED]

Office: BALTIMORE, MD

Date: SEP 04 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, 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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). She is the wife of a lawful permanent resident (LPR) and has two LPR daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), dated March 29, 2007.

On appeal, counsel for the applicant asserts that the applicant has strong family ties in the United States, has lived in the United States since 1988, and that she, her spouse and her children would suffer extreme hardship if she is removed.¹

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (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 record contains a sworn statement from the applicant that establishes that the information provided on the asylum application she filed in 1991 was false. Although the applicant contends that another individual filled out her Form I-589, Request for Asylum in the United States, the AAO notes that the Form I-589 was signed by the applicant. Accordingly, she is inadmissible pursuant to section 212(a)(6)(C) of the Act for having sought an immigration benefit through fraud or the willful misrepresentation of a material fact.

¹ The AAO notes that the applicant indicates that her parents reside in the United States. The record, however, does not establish that they are either lawful permanent residents or U.S. citizens and, therefore, they have not been considered qualifying relatives for the purposes of this proceeding.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the lawfully resident husband of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that a claim of extreme hardship to a qualifying relative should discuss hardship impacts whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of proceeding contains the following relevant evidence: a brief from counsel; statements from the applicant and the applicant’s daughter; W-2s, IRS Form 1040s and bank statements for the applicant and her spouse; published articles discussing violence against women in Guatemala; marriage and birth certificates for the applicant, her spouse and their two daughters.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant has strong family ties in the United States and has been residing in the United States since 1988. He further states that neither the applicant nor her children would be able to find employment in Guatemala to support themselves, that they would be at risk from the high incidence of violence against women and other criminal activities in Guatemala, and that the applicant’s spouse’s career would be interrupted, all of which would cumulatively result in extreme hardship to the applicant, her spouse and children.

The applicant herself states that she would be devastated if she had to return to Guatemala since she has been in the United States since 1988, and that the daughter with whom she lives would suffer extreme hardship because they support one another and she is helping to raise her grandson. She also states that she suffers from high blood pressure and high levels of cholesterol, and that she fears returning to Guatemala where there is a high incidence of crime against women and a significant number of extrajudicial killings. The applicant also contends that she would have difficulty in finding employment because the type of work she performs is not in demand in Guatemala and only young people are hired. She notes that her daughters do not want to return to Guatemala because they are LPRs, and notes that she also has brothers and sisters in the United States who are LPRs.

The record does not document the current employment conditions in Guatemala, and, aside from counsel's assertions, does not indicate that the applicant or her daughters would be unable to find employment in order to support themselves. Neither does the evidence relating to the crimes committed against women in Guatemala and other violence currently ongoing in the country establish that the applicant and her daughters would be victims of such violence. Moreover, the AAO notes that neither the applicant nor her daughters are qualifying relatives for the purposes of this proceeding and that the record fails to address how any hardships they might face upon relocation to Guatemala would affect the applicant's spouse, the only qualifying relative. Although counsel also asserts that the applicant's spouse would suffer hardship upon relocation because his career would be interrupted, the record includes no documentary evidence that demonstrates that he would be unable to obtain comparable employment in Guatemala. Further, the AAO notes that the record contains a sworn statement from the applicant, dated August 23, 2006, indicating that she and her spouse had not lived together in over two years. No evidence has been submitted to establish that the applicant and her spouse have reunited and that he would relocate to Guatemala if the applicant's waiver application were to be denied.

The AAO notes the applicant's claim that, if she were removed from the United States, her youngest daughter with whom she lives would suffer extreme hardship because they support one another and she is helping to raise her grandson. While the record establishes that the applicant is employed and has claimed her daughters as dependents as recently as 2003, the record does not demonstrate that the applicant's youngest daughter is financially or otherwise dependent on her. Moreover, as already discussed, the applicant's daughter is not a qualifying relative in this proceeding and the record does not demonstrate how her hardship in her mother's absence would affect the applicant's spouse, the qualifying relative in this proceeding.

The applicant does not claim that her spouse would experience extreme hardship if he remained in the United States following her removal. As previously noted, the applicant and her spouse are separated and, as of August 23, 2006, had been living apart for more than two years. There is no evidence that the applicant's spouse would suffer any significant financial or emotional impact if the applicant were removed.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband would face extreme hardship if she is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, even when considered in the aggregate, rise above the hardships commonly created by removal or inadmissibility. 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.