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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



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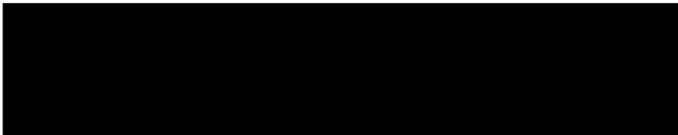
FILE: [Redacted] Office: PORTLAND, MAINE Date:

**JAN 11 2010**

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director in Portland, Maine and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Colombia who is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen husband on her behalf. Before her application for advance parole was approved, the applicant left the United States and was readmitted as a nonimmigrant visitor for pleasure. The field office director found the applicant 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 misrepresentation. 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 spouse.

The field office 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 the Field Office Director* dated July 16, 2008.

On appeal, counsel asserts that the applicant did not willfully misrepresent her purpose in returning to the United States because her prior attorney erroneously advised that she could leave and reenter the country without a problem and she consequently made an “innocent mistake by presenting her B2 visa.” In the alternative, counsel claims that the applicant’s spouse would suffer extreme hardship if the applicant is denied admission to the United States. *See Brief in Support of Appeal*, dated September 18, 2008 at 7-14.

In support of the appeal, counsel submits affidavits from the applicant and her daughter, her husband and his sons; medical records of the applicant’s husband; two support letters from acquaintances of the applicant and a copy of her passport. 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.

The record in this case provides the following relevant facts and procedural history. The applicant is a 60 year-old native and citizen of Colombia. The applicant’s passport shows that she frequently visited the United States since obtaining a nonimmigrant visa in 1997, which was renewed in 2002. The applicant’s passport shows that she entered the United States 11 times before she married her husband, a 74 year-old U.S. citizen, on June 24, 2006 in Massachusetts. In July 2006, the applicant and her husband, through prior counsel, filed a Form I-130, petition for alien relative; a Form I-485, application to adjust status; and a Form I-131, application for travel document (advance parole).

Before her application for advance parole was approved, the applicant returned to Colombia on August 1, 2006. On August 9, 2006, the applicant returned to the United States. U.S. Citizenship

and Immigration Services (USCIS) records show that on primary inspection at the Fort Lauderdale international airport, a U.S. Customs and Border Protection officer noted that the applicant had been in the United States from December 21, 2005 to April 26, 2006 and then again from April 28 to August 1, 2006. According to the primary inspection record, the applicant stated that she was “visiting for scho[o]l in Boston for six days.” The officer referred the applicant to secondary inspection where the applicant indicated she was “returning in a short a [sic] time to sign legal papers from her fiancé, [she] has return ticket on the 15<sup>th</sup> of Aug.” The secondary officer consequently found “No grounds of inadmissibility” and admitted the applicant as a visitor for pleasure (B2) pursuant to her previously issued nonimmigrant visa. The applicant returned to Colombia on August 15, 2006.

The field office director determined that the applicant willfully misrepresented herself as a nonimmigrant visitor to the United States on August 9, 2006 because she was the beneficiary of a then pending alien relative petition and application to adjust status to permanent residency. *Decision of the Director* at 1. On appeal, counsel claims that the applicant’s “presentation of the B2 visa despite her pending adjustment was not a willful misrepresentation because she was completely unaware that the two embody conflicting immigrant intent.” *Brief in Support of Appeal* at 9.

Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B), defines a nonimmigrant visitor as, in pertinent part, “an alien . . . having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.” An intent to immigrate to the United States is inconsistent with the Act’s definition of a nonimmigrant visitor. For that reason, USCIS has long considered entry into the United States as a nonimmigrant visitor with a preconceived intent to establish permanent residence to be a negative factor in discretionary determinations. See *Matter of Ibrahim*, 18 I&N Dec. 55, 57 (BIA 1981) (reaffirming *Matter of Garcia-Castillo*, 10 I&N Dec. 516 (BIA 1964)). In this case, the applicant entered the United States as a nonimmigrant on August 9, 2006 with the intent to pursue her permanent residency application. The applicant and her husband both state that the applicant returned to the United States because she received a notice that she needed to have her fingerprints taken on August 10, 2006 in order to process her adjustment application. *Affidavits of the Applicant and her Husband*, dated September 16, 2008 at ¶ 6. USCIS records show that the applicant was fingerprinted for her adjustment case on August 10, 2006, the day after her entry as a nonimmigrant visitor.

Counsel nonetheless asserts that the applicant did not misrepresent her intentions in entering the United States on August 9, 2006 because she showed her fingerprint notice to the inspecting officer. However, the record contains no copy of the fingerprint notice and the primary and secondary inspection records do not reference any such notice. Going on record without supporting evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Even if the applicant had shown the inspecting officers her fingerprint notice, such action would not account for the applicant’s misrepresentations regarding her intent to visit a school for six days and return in a short time to sign legal papers from her fiancé. On appeal, the applicant claims that the

reference to visiting school reflects a misunderstanding related to her comments that her daughters were studying and working in the United States. Again, the record does not support the applicant's explanation. The applicant submitted no evidence that either of her daughters were studying in the United States in August 2006. In her September 17, 2008 affidavit, the applicant's older daughter states that she began working in the United States in 2002, four years before the applicant's entry in 2006, and the record contains no statement from her younger daughter.

The applicant's description of her inspection on August 9, 2006 also fails to explain why she stated that she would return shortly "to sign legal papers from her fiancé." At the time, the applicant had been married to her husband for over a month. *See Marriage Certificate*. The applicant also fails to explain why she gave different answers regarding her reasons for visiting the United States at primary inspection and during secondary inspection.

Counsel claims that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because her misrepresentations were "unintentional" and she made "an innocent mistake." *Brief on Appeal* at 7-8. There is no requirement that misrepresentations be made with an intent to deceive in order for the inadmissibility bar to apply. *See Matter of Hui*, 15 I&N Dec. 288, 290 (BIA 1975) ("the intent to deceive is no longer required before the willful misrepresentation charge comes into play.") Rather, knowledge of the falsity of the representation satisfies the willfulness requirement. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979). *See also Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir.1999) (stating that the government "does not need to show intent to deceive; rather, knowledge of the falsity of the representation will suffice"); *Witter v. INS*, 113 F.3d 549, 554 (5th Cir.1997) (same); *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995) (same). The record in this case clearly shows that the applicant was already married at the time she told the inspecting officer she was going to "sign legal papers from her fiancé." The record also shows that the applicant was not entering the United States to visit school for six days, as she indicated at primary inspection, but that she came to the United States to have her fingerprints taken in connection with her adjustment of status application the day after her arrival.

Counsel further asserts that the applicant and her spouse "received atrocious legal advice" from their prior attorney who told them that it was "not a problem" for the applicant to return to Colombia and present her nonimmigrant visa for re-entry to the United States. *Brief on Appeal* at 9-10. To the extent that counsel claims the applicant would not have misrepresented herself but for her prior attorney's error, the record fails to support a claim of ineffective assistance of counsel.

To establish the ineffective assistance of prior counsel, an applicant must submit: (1) an affidavit setting forth in detail the agreement that was entered into with the purportedly ineffective counsel with respect to the actions to be taken and what representations prior counsel did or did not make to the applicant in this regard, (2) evidence that the attorney whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) evidence regarding whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), *reaff'd*, *Matter of Compean*, 25 I&N Dec. 1 (A.G. 2009).

The applicant has met none of these requirements. Both the applicant and her husband state that after the applicant's adjustment of status application was submitted, they asked their prior attorney if she could return to Colombia and he informed them that "it would be no problem at all." *Affidavits of the Applicant and her Spouse*, dated September 16, 2008 at ¶ 6. The applicant asserts that her prior attorney "never informed [her] about the parole document." *Affidavit of the Applicant* at ¶ 10. However, USCIS records show that the applicant signed her advance parole form before her departure to Colombia and indicated on the application that she was "applying for an advance parole document to allow [her] to return to the United States after temporary foreign travel." The applicant has also failed to submit any evidence that her prior attorney was given a chance to respond to her allegations; that she filed a complaint with the relevant disciplinary authorities or an explanation of why she did not file such a complaint. Accordingly, the applicant has not met the requirements to establish the ineffective assistance of her prior counsel.

In sum, we affirm the director's determination that the applicant is inadmissible for misrepresentation pursuant to section 212(a)(6)(C)(i) of the Act.

#### *Ineligibility for a Waiver of Inadmissibility*

The applicant is also ineligible for a waiver of inadmissibility for her misrepresentation because the record does not demonstrate that her husband would suffer extreme hardship if she is refused admission to the United States.

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.
- (2) No court shall have jurisdiction to review a decision or action of the [Secretary] regarding a waiver under paragraph (1).

To be eligible for the waiver of inadmissibility at section 212(i) of the Act, applicants must demonstrate that the bar to their admission would cause extreme hardship to a qualifying relative, that is, a U.S. citizen or lawful permanent resident spouse or parent of the applicant. Section 212(i) of the Act, 8 U.S.C. § 1182(i). The plain language of the statute indicates that hardship to applicants themselves or to their children is not relevant except as it results in hardship to a qualifying relative in the application. *Id.* In addition, extreme hardship must be established both if the qualifying relative remains in the United States without the applicant and if the qualifying relative accompanies the applicant to his or her native country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (considering the hardships of both family separation and relocation). 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).

Extreme hardship requires significant challenges over and above the normal economic and social disruptions involved in the separation of family members due to deportation or exclusion. *Matter of Pilch*, 21 I&N Dec. 627, 633 (BIA 1996). For example, the emotional difficulty caused by severing family and community ties is a common result of deportation and does not necessarily constitute extreme hardship. *Id.* at 631. In addition, financial detriment alone will not establish extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citing *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978)).

However, extreme hardship is not a term of “fixed and inflexible meaning, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. The Board of Immigration Appeals (BIA) has set forth a nonexclusive list of factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative. These factors include: family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside of the United States; the conditions in the country where the qualifying relative would relocate and the extent of the qualifying relative’s ties to 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. *See id.* at 565-66 (and cases cited therein). Moreover, “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, counsel asserts that the applicant’s spouse would experience extreme hardship if the applicant’s waiver request is denied due to his health and family ties. The applicant and her husband state that he has diabetes and a heart murmur and relies on the applicant to give him the correct doses of his medications. The applicant’s husband claims that he could not relocate to Colombia because his doctors are in the United States and he would have to pay the entire costs of his health insurance and medications. *Affidavit of the Applicant’s Husband* at ¶ 16 – 17. The medical records of the applicant’s spouse confirm that he has diabetes, underwent heart surgery in May 2002 and takes several medications. The evidence does not indicate, however, that the applicant’s husband would face extreme hardship due to his health if he remained in the United States without the applicant or if he relocated to Colombia.

The medical records indicate that the applicant’s spouse’s surgery was successful and that he “tolerated the procedure without complications.” *Interventional Cardiovascular Medicine Procedure Report*, dated May 28, 2002. His physician also stated that the applicant’s husband “had good cholesterol levels and actually very good diabetes control. Fortunately, everything has worked out.” *Letter of [REDACTED]*, dated September 6, 2002. The applicant’s spouse’s cardiologist further affirmed that his “heart function is normal[,] no evidence of trouble ahead.” *Note of [REDACTED]*, undated. Although the cardiologist also noted, “bring wife to appointments,” he does not provide any further information or otherwise indicate that the applicant’s spouse is unable to manage his health care needs without her. *Id.* Moreover, the record indicates that the applicant’s husband was able to care for himself during the four years following his surgery before he met the applicant. The evidence thus does not demonstrate that the applicant’s spouse

would face extreme hardship to his physical health should he remain in the United States without the applicant.

The relevant evidence also fails to show that the applicant's spouse would be unable to receive adequate medical care in Colombia. To the contrary, the applicant and her spouse both state that since their marriage, they have spent half of each year in Colombia at a home on the Caribbean coast that they own together. *Affidavits of the Applicant and her Husband* at ¶ 8. The applicant's spouse explains that when in Colombia, he is "able to take medications with [him] or order something online if [he needs] a refill." *Affidavit of the Applicant's Husband* at ¶ 16. The applicant's spouse's son also states that when "they go to Colombia [the applicant] looks out for [her husband] and gets the finest medical care for him." *Letter of* [REDACTED], dated September 3, 2008. The federal income tax returns of the applicant and her husband further indicate that he would not encounter financial hardship if he were to pay the entire cost of his health care in Colombia or periodically return to the United States for medical treatment. In 2005, the applicant's spouse reported an adjusted gross income of \$2,175,736 and the couple's most recent adjusted gross income of record is \$978,446. *2005 and 2007 Income Tax Returns*. The applicant's spouse reports that he owns "an extremely successful company and will retire comfortably." *Affidavit of Applicant's Husband* at ¶ 19. The applicant is also financially successful and states that she owns "two private properties and a property rental business in Colombia." *Affidavit of Applicant* at ¶ 8. Accordingly, the record indicates that the applicant's spouse would not face extreme hardship in meeting his healthcare needs in Colombia.

The relevant evidence also does not support counsel's claim that "refusing the Applicant admission to the U.S. would be an emotionally devastating loss for [REDACTED]" and that "his mental health [would be] at risk." *Brief on Appeal* at 12. The applicant submitted a psychological evaluation of her spouse by [REDACTED]. *Evaluation of* [REDACTED] dated December 17, 2007. [REDACTED] concluded that the applicant and her spouse "have worked out a comfortable relationship that makes [her spouse] very happy and that improves his physical as well as emotional functioning." *Id.* [REDACTED] stated that the separation of the couple would cause the applicant's spouse to suffer "debilitating loss and sadness." Yet, [REDACTED] did not diagnose the applicant's husband with any psychological condition or indicate that his mental health would clinically deteriorate upon the couple's separation. [REDACTED] evaluation is also of little probative value because it is based on a single, one-hour telephonic interview and does not reflect the insight of an ongoing treatment relationship. Most importantly, the record indicates that the applicant's spouse could avoid the emotional hardship of separation from the applicant by relocating to Colombia with her.

Finally, counsel asserts that the applicant's spouse would face extreme hardship if the waiver is denied because his siblings, children and grandchildren all live in the United States and he has no family ties to Colombia. Again, the record does not support this claim. The applicant's husband states that all of his family is located in the United States and that they "spend a lot of time together all year round doing family activities." *Affidavit of the Applicant's Husband* at ¶ 18. Yet both the applicant and her spouse state that since their marriage, they have spent half of each year in Colombia away from her spouse's family. *Affidavits of the Applicant and her Husband* at ¶ 8. The couple attests to their strong emotional bonds and the applicant's spouse does not indicate that he has suffered any emotional hardship when separated from his family during all of his extensive stays in

Colombia in the past. The financial records of the applicant's spouse also indicate that he would be able to return to the United States frequently to visit his family.

In sum, the record indicates that the difficulties the applicant's husband would experience if she is denied admission to the United States are of the type generally encountered as a result of a spouse's deportation or exclusion. Federal courts 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (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 difficulties faced by the applicant's husband, considered in the aggregate, extend beyond the common results of an alien's inadmissibility and rise to the level of extreme hardship. The applicant has consequently failed to establish extreme hardship to her U.S. citizen spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

When extreme hardship to a qualifying relative is established, USCIS will then assess whether a favorable exercise of discretion is warranted. *Matter of Mendez*, 21 I&N Dec. at 301. As the applicant here has not established extreme hardship to her qualifying relative, we do not reach the issue of whether she merits a waiver of inadmissibility 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. 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.