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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
and Immigration
Services**

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FILE:

[REDACTED]

Office: NEWARK

Date:

JAN 11 2010

(relates)

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

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Colombia who attempted to procure entry to the United States in November 1990 by presenting a fraudulent passport and nonimmigrant visa. He 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 attempted to procure admission into the United States by fraud and/or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated August 13, 2007.

On appeal, counsel for the applicant submits a brief, dated September 14, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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.

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

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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) 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 applicant experiences is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

The applicant's U.S. citizen spouse contends that she will suffer emotional, physical and financial hardship if she remains in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration she asserts that she will suffer emotional hardship, for she loves her spouse very much and he has been a good, loving man to her. She also notes that she would worry about her husband in Colombia due to the problematic county conditions, including crime and poverty. The applicant's spouse further contends that she would suffer physical hardship, as she has "one herniated disc in my back's upper region and two muscles in my lower back that are damaged.... I cannot do the simplest of tasks around the house without feeling this excruciating pain. I cannot get up, bend over, sit down, reach up or climb the staircase without discomfort.... My husband [the applicant]...does most of the chores around the house.... He does most of all the heavy work, cleaning, rearranging the furniture, laundry and food shopping.... He helps me to climb staircases or get up or sit down whenever it is too hard for me...." *Affidavit of* [REDACTED] dated January 21, 2006. Finally, the applicant's spouse contends that she would suffer financial hardship, as they both work in order the support the household. *Id.* at 1.

In support of the emotional hardship referenced by the applicant's spouse, an affidavit has been prepared by [REDACTED] [REDACTED] states that the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood as a result of her fear that her husband will return to Colombia. He concludes that were the applicant unable to remain in the United States, his spouse's "depressive symptomatology would become significantly exacerbated and she might well develop suicidal ideation at that time...." *Affidavit of* [REDACTED] dated January 13, 2006.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions referenced by [REDACTED] [REDACTED], to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration

commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. It has thus not been established that the applicant's spouse will experience extreme emotional hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility.

In support of the physical hardship referenced by the applicant's spouse, a letter has been provided by the applicant's spouse's physician, [REDACTED] dated approximately 20 months prior to the appeal submission, confirming that the applicant's spouse has been diagnosed with osteoarthritis, degenerative joint disease, spondylotic changes of cervical vertebrae, radiculopathy, degenerative changes of lumbar spine and carpal tunnel syndrome, but is on prescription medicines for relief of pain and other symptoms. The record does not establish the current gravity of the situation, the short and long-term treatment plan and what limitations have been imposed on the applicant's spouse's physical capabilities due to the above-referenced diagnosis and what specific hardships the applicant's spouse will endure due to the applicant's physical absence from the United States.¹

The AAO recognizes that the applicant's 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 based on the record. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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.

As for the financial hardship referenced above, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's

¹ The AAO notes that despite the medical conditions outlined by [REDACTED] the applicant's spouse has been able to maintain full-time, gainful employment, since March 1991, for [REDACTED]. Letter from [REDACTED] dated July 21, 2005.

circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record establishes that the applicant’s spouse is gainfully employed. *Supra* at 1. No documentation has been provided on appeal that outlines the applicant’s and his spouse’s current financial situation, including income, expenses, assets and liabilities, and their financial needs, to establish that without the applicant’s continued presence in the United States, his spouse’s financial hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant would be unable to find gainful employment in Colombia that would allow him to assist his spouse in the United States financially should the need arise. Going on record without supporting documentary 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)). As such, the record fails to establish that the applicant’s spouse’s continued physical, emotional and financial survival directly correlate to the applicant’s physical presence in the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant’s waiver request. With respect to this criteria, counsel and the applicant’s spouse detail the problematic country conditions in Colombia, including crime and violence, substandard health care² and economic woes. Moreover, the AAO notes that the U.S. Department of State has issued a warning for U.S. citizens intending to travel to Colombia. *See Travel Warning-Colombia, U.S. Department of State*, dated November 10, 2009.

Based on the problematic country conditions in Colombia and the warning issued by the U.S. Department of State, urging U.S. citizens and permanent residents to avoid travel to Colombia, the AAO concludes that the applicant’s U.S. citizen spouse would experience extreme hardship were she to relocate to Colombia n to reside with the applicant.

² As the U.S. Department of State notes,

Medical care is adequate in major cities but varies greatly in quality elsewhere. Emergency rooms in Colombia, even at top-quality facilities, are frequently overcrowded and ambulance service can be slow. Many private health care providers in Colombia require that patients pay for care before treatment, even in an emergency. Some providers in major cities may accept credit cards, but those that do not may request advance payment in cash. Uninsured travelers without financial resources may be unable to obtain care, or relegated to seeking treatment in public hospitals where care is far below U.S. standards.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if she were to remain in the United States while the applicant relocated abroad based on his inadmissibility. The record demonstrates that the applicant's U.S. citizen spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse/step-parent is removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver 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. The waiver application is denied.