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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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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEWARK, NJ

Date:

JAN 12 2010

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 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.

  
Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to 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 enter the United States using a photo-substituted passport. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the application accordingly. *Decision of the Field Office Director*, dated July 7, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on August 28, 1982; an affidavit from [REDACTED]; an affidavit and statements from the applicant; a copy of the birth certificate of the couple's U.S. citizen child; psychological evaluations for [REDACTED] and the applicant; a letter from the couple's physician; copies of financial and tax documents; a copy of the U.S. Department of State's Consular Information Sheet for Ecuador and other background materials on country conditions in Ecuador; letters from the applicant's and [REDACTED] employers; tax documents; a letter from the couple's landlord; and a copy of an approved Immigrant Petition for Alien Worker (Form I-140). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that in September 1996, the applicant attempted to enter the United States using a fraudulent passport. *Affidavit by* [REDACTED] at 1, dated August 6, 2007. The applicant withdrew her application for admission and returned to Ecuador. Later that year, in 1996, the applicant returned to the United States and entered without inspection. *Bona Fides Affidavit by* [REDACTED], dated August 6, 2007. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Morales*, 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. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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. The BIA has held:

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). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant's lawful permanent resident husband, [REDACTED] states that he and his wife love each other dearly and recently celebrated their 25<sup>th</sup> wedding anniversary. [REDACTED] states he would suffer extreme emotional and economic hardship if his wife's waiver application were denied. He states his wife has always been an excellent mother to their three children as well as a hard worker who works full-time at a laundromat, earning \$300 per week. [REDACTED] claims his wife gets home from work earlier than he does, cares for their youngest son who is eight years old, and that if she were not there, no one could care for their youngest son when he gets out of school. [REDACTED] contends that he and his sons are devastated at the thought that the applicant might have to leave the country. He states he has always been an exceptional employee, but that since his wife's waiver application was denied, he is having a hard time staying motivated and completing his work on time. In addition, [REDACTED] states he has a history of gastritis, lower back pain, sciatica, and traumatic fracture of the left knee. He contends the "hardware in [his] left knee causes [him] persistent pain," and that he will need another knee surgery in the near future. [REDACTED] states he cannot move back to Ecuador because he would be unable to receive proper medical care for his various health conditions and he would be unable to find employment given Ecuador's high unemployment rate, the fact he has been out of the country for eighteen years, and the fact that he is fifty years old. He contends he and his wife came to the United States in search of a better future for their family as the social, political, and economic situation in Ecuador is very unstable. Furthermore, [REDACTED] states that his father, who lives in Ecuador with [REDACTED] three sisters, depend on [REDACTED] to send them \$100 per month. [REDACTED] further contends his sons would lose the educational opportunities available in the United States if they were to move back to Ecuador. *Affidavit by [REDACTED], dated August 6, 2007.*

A psychological evaluation in the record states that [REDACTED] exhibited a depressed, sad affect throughout the evaluation. According to the psychologist, [REDACTED] is experiencing a Major Depressive Episode triggered by his wife's immigration case. [REDACTED] reported that he feels sad most of the day nearly every day, feels a lack of pleasure in activities he used to enjoy, has trouble sleeping, eats less, moves more slowly than usual, and feels irritable and hopeless. In addition, [REDACTED] reported having thoughts of suicide, expressed there was no point in living if he is apart from his family, and wished that "it would just be over;" however, [REDACTED] denied having any plans to hurt himself. Moreover, the psychologist stated that [REDACTED] had significant difficulties after a work-related accident in a prior job. According to the report, [REDACTED] received stitches to his knee in January 2001 and subsequently underwent surgery to place screws in his knee. [REDACTED] reportedly experiences chronic pain in his knee, has trouble walking, and will undergo another surgery to take the screws out. [REDACTED] was unable to work for five months following his first surgery, used a wheelchair for six months and then used crutches, and needed his wife to help him bathe, walk to the bathroom, and cook for him. He is worried about the financial implications of being unable to work again and worries about how he will recuperate if he does not have his wife to assist him. Furthermore, the evaluation stated that [REDACTED] youngest son, [REDACTED] was born "pigeon-toed" and has required physical therapy. This problem reportedly led to some trouble walking, a "difficulty [that] persists to this day." [REDACTED] also reportedly "requires some special

attention in order to progress with his reading skills.” *Psychological Evaluation by* [REDACTED] dated August 1, 2007.

A letter from [REDACTED] physician states that [REDACTED] has a history of gastritis, lower back pain, sciatica, and traumatic fracture of his left knee since January 2001. According to the doctor, [REDACTED] has had persistent pain in his left knee which has gotten worse because of the hardware in the knee. The doctor describes the pain as radiating to [REDACTED]’s thigh and states that [REDACTED] may need another surgery. *Letter from* [REDACTED] dated July 26, 2007.

The record also contains information addressing the applicant’s physical and mental health issues. A letter from the applicant’s doctor states that the applicant has gastritis, arthritis, and depression. *Letter from* [REDACTED] *supra*. In addition, a psychological evaluation of the applicant in the record indicates the applicant has a history of panic attacks. According to this evaluation, in 1996, the applicant was arrested twice, first at the airport and again while she was working. The applicant reportedly panics every time she sees a police car. The evaluation diagnoses the applicant with generalized anxiety disorder and major depressive disorder. *Psychological Evaluation by* [REDACTED] dated February 12, 2007. A letter from the applicant’s psychiatrist states the applicant was under his care in 1996 and 1997 due to “Panic Attacks and Depressive and Anxiety Neurosis.” The psychiatrist states the applicant has been under his care again since September 2002 for the same condition and is taking three prescription medications for treatment. *Letter from* [REDACTED] [REDACTED], dated June 2, 2005. The record indicates that the applicant’s health problems have significantly impacted her husband.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that her husband will experience extreme hardship if her waiver application is denied.

It is evident from the record that the physical and emotional hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED], who is currently fifty-two years old, has had knee problems since 2001 and continues to suffer from chronic knee pain that radiates to his thigh. The record indicates that he may need additional surgery and that following his last knee surgery, he was unable to work for five months, used a wheelchair for six months, and relied on his wife to help him with all aspects of his recovery including bathing him. In addition, the record shows that [REDACTED] is depressed and possibly suicidal. The record also shows that [REDACTED] suffers from gastritis, lower back pain, and sciatica. Moreover, the record indicates the applicant and [REDACTED] have been married for over twenty-seven years and that [REDACTED] relies on his wife as the primary caretaker of their family. Considering all of the evidence in the aggregate, particularly considering [REDACTED]’s physical and mental health issues, the effects of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

It would also constitute extreme hardship for [REDACTED] to return to Ecuador to avoid the hardship of separation from his wife. The record shows that [REDACTED] has lived in the United States for

more than twenty years. would need to readjust to a life in Ecuador after having lived in the United States since December 1988, a difficult situation made even more complicated considering his physical and mental health issues. Furthermore, documentation in the record addressing country conditions in Ecuador states that both violent and non-violent crime is common in urban Ecuador and the U.S. Embassy in Quito advises against travel to the northern border of Ecuador due to organized crime, drug trafficking, small arms trafficking, and incursions by various Colombian terrorist organizations. *U.S. Department of State, Consular Information Sheet for Ecuador*, dated June 12, 2006. Of particular concern for given his physical and mental health problems, is the quality of medical care in Ecuador, which is “generally below U.S. standards,” and that the availability of medications is sporadic. *Id.* In sum, the hardship would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant’s attempt to enter the United States using a fraudulent passport and her subsequent entry without inspection. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including her lawful permanent resident husband, two lawful permanent resident sons, and her U.S. citizen son; the extreme hardship to the applicant’s husband if she were refused admission, particularly in light of her husband’s physical and mental health conditions and the length of their marriage; the applicant’s recognition of and apology for violating the immigration laws, *Affidavit by* dated August 6, 2007; *Letter from* dated “this 23<sup>rd</sup> day of 2007”; and the applicant’s lack of any criminal convictions.

The AAO finds that, although the applicant’s immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.