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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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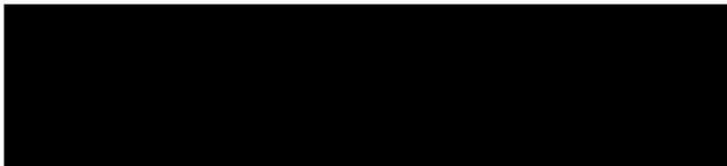
**JAN 15 2010**

IN RE:



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:



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.

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ecuador who 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 procured admission to the United States through fraud or misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She 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 husband.

The district 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 District Director* dated February 19, 2009.

On appeal, counsel for the applicant asserts that her husband would suffer emotional, financial, and physical hardship if the applicant were removed from the United States. *Brief in Support of Appeal* at 1. Specifically, counsel states that the applicant's husband suffers from a significant medical condition that has required repeated eye surgeries and threatens his vision and he relies on the applicant for emotional and physical support. *Brief* at 2. Counsel further claims that if the applicant were removed from the United States her husband would suffer financial hardship due to loss of her income and would be unable to pay his expenses, including the mortgage on their home and his student loans. *Brief* at 6. Counsel further claims that the applicant's husband would be unable to find employment in Ecuador and would lose his home and everything he has worked for in the United States if he relocated to Ecuador with the applicant. *Brief* at 6. In support of the appeal counsel submitted a psychological evaluation of the applicant's husband, insurance documents related to the home owned by the applicant and her husband, a letter from the applicant's husband's physician, letters from the employer of the applicant and her husband, and a copy of a 2008 income tax return. 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.

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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *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 Ninth Circuit Court of Appeals has held, "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 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty year-old native and citizen of Ecuador who was admitted to the United States on March 21, 2000 after presenting a fraudulent Ecuadorian passport and U.S. visa in the name of [REDACTED]. She was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. The record further reflects that the applicant's husband, whom she married on March 9, 2001, is a thirty-nine year-old native of Ecuador and citizen of the United States. The applicant and her husband currently reside in Hightstown, New Jersey.

Counsel asserts that the applicant's husband would suffer emotional and physical hardship if the applicant were removed from the United States because he suffers from a serious medical condition and relies on the applicant for support and assistance. In support of this assertion, counsel submitted a letter from the applicant's husband's doctor stating that he has severe recurrent pterygium with extensive scarring and has undergone repeated surgeries in both eyes as well as beta radiation. *See Letter from [REDACTED] dated March 16, 2008.* [REDACTED] further states that surgery was again performed due to ocular changes that threatened his vision, but that the left eye had difficulty healing and has a lot of irritation and inflammation that require several medications and will most likely necessitate more eye surgery in the near future. *Letter from [REDACTED]* She further states,

His condition can make it difficult for him to drive due to light sensitivity and tearing. He needs help with placing medications in his eye and commuting to work. After surgery he will not be able to drive or perform basic household activities until full recovery. Due to the fact that he has had multiple unsuccessful surgeries it is difficult to tell if his upcoming surgery is going to be successful and if it improves his condition to the satisfactory level. *Letter from [REDACTED]*

The applicant's husband states that his life has been a nightmare due to uncertainty over the applicant's immigration status and he is confused and uncertain whether he wants to be a father now because his wife and child may be in another country and the child would not know his father. *Letter from [REDACTED] dated August 18, 2006.* The record also contains a psychological evaluation of the applicant's husband conducted on March 17, 2009 and letters from physicians stating that they have treated the applicant's husband for depression in the past. The psychological evaluation states that the applicant's husband reports feeling overwhelmed and fears losing his wife, their home, "and everything they have worked for over the past eight years." *Psychological Evaluation by [REDACTED] dated March 18, 2009.* [REDACTED] further states that the applicant's husband "depends heavily on his wife for emotional and financial support" and frequently sees an ophthalmologist for his eye disease and requires the assistance of the applicant when his vision becomes impaired by treatments and surgeries. *Psychological Evaluation by [REDACTED]* Dr. [REDACTED] states that the applicant's husband reports experiencing symptoms including sleep problems, chest pains, lack of energy and motivation, chronic headaches, and digestive problems, and concludes that the applicant's husband is experiencing severe depression and anxiety and "feels that his life is disintegrating around him resulting in a significant depressive state." She further states that "psychopharmacological management is critical." *Psychological Evaluation by [REDACTED]*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The applicant's husband suffers from a chronic eye condition that requires ongoing treatment and has not been corrected by repeated surgeries. This condition and the related treatment affects his ability to conduct daily activities and commute to work and according to his physician the applicant's husband also needs assistance in administering medication. It further appears that the applicant's husband is suffering from depression and anxiety over the fear of being separated from the applicant, and he relies heavily on the applicant for support and assistance in his medical treatments. The AAO notes that although the applicant's husband only met once with the psychologist who prepared the psychological evaluation submitted by counsel, the record contains a letter from a physician stating that the applicant's husband was under his care in 2006 for depression and a letter from a psychiatry practice stating that the applicant's husband was being treated for major depressive disorder and that remission was expected "with compliance to psychopharmacological treatment." See letters from [REDACTED] dated July 27, 2006 and [REDACTED], dated July 11, 2006. Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if she is denied admission and he remains in the United States. The record indicates that he is suffering from a medical condition that affects his vision, requires frequent treatments and assistance from the applicant, and had not been corrected despite several eye surgeries. These circumstances, combined with the potential emotional effects of being separated from the applicant and his history of treatment for depression, rise to the level of extreme hardship for the applicant's husband if he remains in the United States and the applicant is denied admission to the United States.

The record indicates that the applicant's husband has resided in the United States for almost twenty years and he states that fears leaving his job, house, career, education, and family in the United States to start a new life in Ecuador. Letter from [REDACTED] dated August 18, 2006. He further states that he will not have insurance to pay for his medical treatments in Ecuador and the doctors and technology will not be available there to perform future surgeries. Letter from [REDACTED] dated May 2, 2008. He further states,

I also have a debt for \$28,000 loans used to pay for my college that I'm currently paying and I do not have the resources to pay the full amount of the loans if I have to leave the country with my wife. The equity in our property is not enough to pay for my loans. *Id.*

The record contains documentation indicating that the applicant's husband owes approximately \$28,000 in student loans and further indicates that he and the applicant own a home in New Jersey. Further documentation indicates that the applicant's husband has two sisters and a niece and nephew who are U.S. Citizens and reside in East Windsor, New Jersey. When considered in aggregate, the factors of hardship to the applicant's husband also constitute extreme hardship if he were to relocate to Ecuador. This finding is based in part on evidence of a significant medical condition for which he is receiving treatment in the United States as well as his length of residence, employment history, and family and property ties to the United States. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998). Separation from his family members in the United States combined with any

difficulty the applicant's husband would have finding employment and adjusting to economic and social conditions in Ecuador after nearly twenty years in the United State and seeking medical care for his condition would rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's use of a fraudulent passport and visa to enter the United States. The favorable factors in the present case are the extreme hardship to the applicant's husband, the applicant's lack of a criminal record or other immigration violations, and her employment history and property ties to the United States.

The AAO finds that immigration violation committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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.