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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: GUATEMALA CITY Date:

MAY 22 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), 1182(i)

ON BEHALF OF PETITIONER:

[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 Field Office Director, Guatemala City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was admitted to the United States on April 30, 2001, with a B-2 visa valid until October 29, 2001. The applicant departed from the United States in or around October 2003. On November 18, 2003, when the applicant attempted to enter the United States with a B-2 visa, she presented her passport which contained a back-dated Guatemalan entry stamp to conceal her true period of unlawful stay in the United States. She 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 seeking to procure admission to the United States through fraud or misrepresentation, and under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant not in possession of a valid entry document. The applicant was removed under an order of expedited removal. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 1182(i), in order to reside in the United States with her spouse.

The Field Office Director concluded that the applicant was inadmissible under three provisions of the Act. *See Revised Decision of the Field Office Director*, dated Apr. 12, 2007. First, the Field Office Director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act because of her unlawful presence in the United States in excess of one year. *Id.* Second, the Field Office Director noted that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States through fraud or misrepresentation. *Id.* Third, the Field Office Director determined that the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien unlawfully present after previous immigration violations, who seeks admission less than ten years after the date of the alien's last departure from the United States. *Id.*

On appeal, the applicant concedes through counsel that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of more than one year, and section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States through fraud or misrepresentation. *See Brief in Support of Appeal*, dated April 1, 2007. The applicant contends that she is eligible for waivers of these grounds of inadmissibility on the basis of extreme hardship. *See id.* The applicant further contends that there is no evidence in the record to support the Field Office Director's finding that she is inadmissible under section 212(a)(9)(C)(i) of the Act as an alien unlawfully present after previous immigration violations. *See id.*

The record contains a brief in support of the appeal, an un-annotated wedding photograph which appears to show the applicant and her husband, and jointly signed and notarized loan documents relating to property in Columbus, Mississippi, dated December, 2006. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(C) of the Act provides:

(C) Aliens unlawfully present after previous immigration violations

(i) In general

Any alien who--

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

8 U.S.C. § 1182(a)(9)(C).

The Field Office Director found the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act because “[t]he record is clear that on December 01, 2003 [the applicant] attempted to enter the United States without being admitted after previously being ordered removed.” *See Revised Decision of the Field Office Director, supra*. In support of this finding, the Field Office Director stated that the applicant attempted to re-enter the United States on December 1, 2003, with a back-dated Guatemalan entry stamp, after the previous order of removal on November 18, 2003. *Id.* The Field Office Director concluded that the applicant was ineligible for an exception under section 212(a)(9)(C)(ii) of the Act because she could not show that more than ten years had passed after the date of her last departure from the United States. *Id.* The applicant contends that there is no evidence in the record to support the Field Office Director’s finding that she is inadmissible under section 212(a)(9)(C)(i). *See Brief in Support of Appeal, supra*. Specifically, the applicant claims that after her removal on November 18, 2003, she has lived in Guatemala, and has not attempted to reenter the United States. *See id.*

The applicant’s contention has merit. The record contains a memorandum from the Department of State to the Department of Homeland Security, dated August 24, 2006, which notes an attempted re-entry and deportation on December 1, 2003. However, this date appears to be the result of scrivener’s error, as there is no supporting documentation, and the memorandum contains no

reference to the applicant's attempted reentry and removal on November 18, 2003, which is thoroughly documented in the record. The error is reflected in the Decision of the Field Office Director, which notes a removal on November 18, 2003, and an alleged subsequent attempted entry on December 1, 2003, with a back-dated Guatemalan entry stamp. Short of the unsupported statement in the Department of State memorandum, there is no evidence to support a finding that the applicant attempted to enter the United States on December 1, 2003, after her removal on November 18, 2003. Accordingly, the applicant has met her burden of proof that she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The applicant concedes, however, that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of more than one year, and section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States through fraud or misrepresentation. *See Brief in Support of Appeal, supra.*

Section 212(a)(9)(B) of the Act provides in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who- . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

8 U.S.C. § 1182(a)(9)(B).

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 chapter is inadmissible.

8 U.S.C. § 1182(a)(6)(C).

Both grounds of inadmissibility provide for a discretionary waiver for an individual 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 "would result in extreme hardship to the citizen or lawfully resident spouse or parent" of such individual. *See* sections 212(a)(9)(B)(v) of the Act (unlawful presence waiver); 212(i) of the Act (misrepresentation waiver).

Extreme hardship to the qualifying family member must be established in the event that he or she remains in the United States without the applicant, and in the event that he or she accompanies the applicant to the home country. However, a qualifying relative is not required to reside outside of the United States based on a denial of an applicant's waiver request. Hardship to the applicant herself is not a consideration in these waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship "is not . . . fixed and inflexible," and the determination is 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 (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties

alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held 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 39-year-old native and citizen of Guatemala. Although there is no marriage certificate in the record, it appears that the applicant and her husband, [REDACTED], a 45-year-old native and citizen of the United States, have been married for five years. See *Form G-325A* (indicating marriage on April 28, 2004). It also appears that the couple purchased property together in or around December 2006. See *Loan Documents, supra*.

In support of the hardship claim, the applicant's brief on appeal states:

[REDACTED] and her husband, a United States Citizen, have more than substantiated her request for an I-601 waiver. In addition, they have cited many significant factors to show that they would suffer an extreme and exceptional hardship if [REDACTED] were not granted a waiver and allowed to return to the US until 2013.

See Brief in Support of Appeal, supra. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record is devoid of documentary evidence regarding any psychological, financial or medical hardships suffered by [REDACTED] as a result of the applicant's inadmissibility. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). Accordingly, the applicant has not satisfied her burden of proof of showing extreme hardship to a qualifying family member. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (noting that going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings).

In proceedings for an application for a waiver of grounds of inadmissibility, 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.