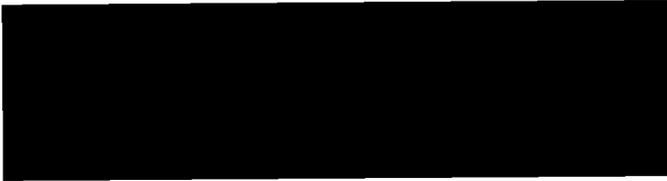




U.S. Citizenship
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Services

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FILE: [REDACTED] Office: MEXICO CITY (PANAMA) Date:

MAR 22 2010

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 District Director, Mexico City (Panama), Mexico. The matter 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on February 19, 1994. The applicant is married to a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated June 7, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The district director also questions the validity of the applicant's marriage to her U.S. citizen spouse. The district director states that although the record shows that the applicant was married on June 18, 2005, public records indicate that as of October 2006 the applicant was residing with the father of her U.S. citizen daughter and her current spouse was residing with his mother and ex-wife. The district director also states that Connecticut does not have a record of the applicant's marriage nor does it have a record of the applicant's spouse's divorce from his former wife. The application was denied accordingly.

In a Notice of Appeal to the AAO dated June 30, 2007, the applicant's spouse states that he is married to the applicant and is divorced from his former wife. He submits his marriage certificate from the Connecticut Department of Public Health and his divorce decree from the Superior Court of the State of Connecticut. The applicant's spouse also states that his hardship rises to the level of extreme.

In a letter dated December 14, 2008, the applicant's spouse requests an oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. U. S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

The AAO notes that it is not within the jurisdiction of the AAO in this proceeding to make a determination regarding the validity of the applicant's marriage. As the applicant's Petition for Alien Relative (Form I-130) was approved on November 17, 2005 and has not been revoked.

During the applicant's waiver interview at the U.S. Embassy in Panama, the applicant admitted to using a fraudulent visa to enter the United States at the Miami Port-of-Entry on February 19, 1994. Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (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.

As stated above, the applicant entered the United States with a fraudulent visa on February 19, 1994. The applicant remained in the United States until March 7, 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until March 7, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her March 7, 2006 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

....

- (v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or her U.S. citizen child experiences due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless hardship to the applicant or her children is shown to cause hardship to the applicant's spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See 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 emotional hardship caused by severing family and community ties is a common

result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of hardship includes: a letter from the applicant’s spouse, a petition from community members, a statement from the applicant’s stepson, a letter from the applicant’s child’s teacher, and photographs of the family. The entire record was reviewed and considered in rendering a decision on the appeal.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Colombia. In the Notice of Appeal to the AAO the applicant’s spouse states that he will move to Colombia with the applicant’s daughter in order to spend every day with the applicant like a normal couple. The record does not include any statements regarding the hardship the applicant’s spouse might face if he did relocate to Colombia nor does it include any documentation to support a claim of hardship, including, but not limited to country condition reports for Colombia. Thus, the AAO cannot find that the current record establishes that the applicant’s spouse would suffer extreme hardship as a result of relocation to Colombia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In the Notice of Appeal to the AAO the applicant’s spouse states that he is caring for his step-daughter with no financial support from her father. He states that his income is \$29,204.66 and his yearly rent is \$18,300. He states that he also has many other expenses including his electric bill, car insurance, gas, food, and money that he sends to the applicant. In a letter received on July 10, 2008, the applicant’s stepson states that his birth mother abandoned the family and his father has taken care of him for most of his life. He states that his father is struggling in trying to care for his stepdaughter and not having his wife in the United States. He states that when his stepmother’s visa was denied he could hear the depression and sadness in his father’s voice. Finally, he states that within the next two years he will be deployed to Afghanistan and does not want to leave his father behind, suffering from worrying about him and his stepmother. The AAO notes that there is no evidence or specific details regarding the applicant’s emotional distress in the record. There is also no documentation to show that when the applicant was in the United States she was contributing to the family income, thus making it a financial hardship for her spouse to support the family in her absence. In addition, the record does not include documentation showing the applicant’s spouse’s payments to the applicant in Colombia or that the applicant is unable to earn an income in Colombia. The AAO notes that the record does indicate that the

applicant is a seamstress by profession. Therefore, a thorough review of the current record does not reflect that separation will result in extreme hardship to the applicant's spouse.

The AAO also notes that the record contains a petition and a letter from teachers and other employees at the applicant's daughter's school. Both documents state that the applicant has been banned from entering the United States because of strict laws passed after September 11, 2001, that the applicant's daughter is suffering from not being able to have her mother in the United States, and that they are asking for an exception to be made in the applicant's case. In addition, the letter dated July 5, 2008 states that the U.S. Government or Colombia believe that the applicant's marriage to her U.S. citizen spouse is fraudulent. The AAO notes that the applicant's inadmissibility is not based on laws enacted after September 11, 2001, but is based on the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Again, the applicant has been found inadmissible for having accrued unlawful presence in the United States and for having entered the United States with a fraudulent document. Furthermore, as stated above, hardship the applicant's child experiences due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless hardship to the child is shown to cause hardship to the applicant's spouse. Finally, despite the statements of the district director, U.S. Citizenship and Immigration Services (USCIS) has not found that the applicant's marriage to her U.S. citizen spouse is fraudulent. On November 17, 2005, an Alien Relative Petition was approved thereby validating the applicant's relationship to her spouse.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.