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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: PANAMA Date: APR 16 2003

IN RE: Applicant: [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]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Panama, 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 made a material and willful misrepresentation and submitted fraudulent documents at the time of her non-immigrant visa interview on February 27, 2001. The record reflects that the fraudulent documents were material to the issuance of the applicant's visa and that the applicant used the visa to procure entry into the United States (U.S.). The applicant is married to a naturalized U.S. citizen and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of the grounds of inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

In his decision, the officer in charge (OIC) noted the applicant's claim that her husband would suffer mental and physical hardship because he has a good job in the U.S., owns his own home, and would not be able to visit the applicant and their child very often. The OIC stated that the applicant's argument was speculative and that no proof of extreme hardship was submitted to support her claim. The waiver application was denied accordingly.

In lieu of submitting a brief on appeal, counsel submitted a two page sworn statement from the applicant's husband (Mr. [redacted] outlining the hardship he would suffer if his wife were not allowed to return to the United States. Counsel also submitted doctors letters and letters from Mr. [redacted] co-workers to support Mr. [redacted] extreme hardship claim.

Mr. [redacted] sworn statement (Hardship letter) states that he has a heart murmur and three herniated disks in his neck. Mr. [redacted] states:

> I am under ongoing medical supervision to ensure that my condition does not deteriorate to the point that my life is threatened. I [am] suffering from awful pains in my neck that many times incapacitate me to the point that I can not carry [out] my daily activities. The doctors have informed me that if my heart condition worsens I may need an open-heart surgical procedure to correct a birth defect in my heart. I am under regular medical supervision because my condition can very quickly become life threatening. *See Hardship letter* at 1.

Mr. [redacted] states that his heart condition causes shortness of breath and dizziness and makes him feel like he is dying.

He adds that his condition is potentially life threatening and that he needs his wife to care for him. *Id.* Moreover, Mr. [redacted] states that he cannot move to Colombia because "[n]ot continuing with the same specialist that has treated me for years may threaten my life." *Hardship letter* at 2. The applicant also states that he is suffering from clinical depression because he does not have his wife to help him cope with his physical condition. Lastly, Mr. [redacted] states that Colombia is a very dangerous country and that he fears moving there. *Id.*

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 may, in the discretion of the Attorney General, 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (the BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is her U.S. citizen husband. The record indicates that Mr. [redacted] has no other family in the United States, that he is a native of Colombia and that he and his wife are from the same town.

To support the assertions regarding Mr. [redacted] physical condition, counsel submitted five letters from doctors written between the years 1997 and 2000. Although the letters refer to Mr. [redacted] neck injury and his heart murmur, the letters give no indication, whatsoever, that Mr. [redacted] suffers severe pain, dizziness or incapacitation as a result of his physical conditions. Moreover, the letters do not indicate in any way that the applicant suffers from a life-threatening condition or that he may need open-heart surgery, and they do not mention any need for a caretaker. To the contrary, the doctor's letters submitted by counsel indicate that the applicant is in excellent health and that he "does not experience any type of effort-related shortness of breath or anginal-type chest discomfort." The letters indicate further that Mr. [redacted] "is particularly physically active doing weightlifting and is involved in martial arts with, apparently, a significant amount of aerobic activity" and they conclude that Mr. [redacted] should be able to lead a normal life and that he need not be concerned about the mild degree of his heart murmur. *See Dr. Prem Chatpar letters*, dated May 1, 1997 and February 16, 2000.

Mr. [redacted] claim that he requires ongoing cardiac treatment by the same medical specialist is also not supported by the evidence. The evidence in the record indicates that the applicant saw Dr. [redacted] once in April 1997, and once in February 2000. No subsequent follow-up visits are documented, and it is noted that Mr. [redacted] now lives in Florida whereas Dr. [redacted] is located in New York.

To support the claim that Mr. [redacted] suffers from clinical depression, counsel submitted a one paragraph letter from Neil Applebaum, Psy.D. The letter submitted by counsel lacks probative value. No evidence was submitted to qualify Neil Applebaum as an expert. Moreover, the contents of the letter are general and do not define or address the medical conditions and consequences of Mr. [redacted] depression. The letter additionally fails to provide information to document the basis of medical conclusions regarding Mr. [redacted] mental and physical condition. Similarly, the applicant's co-workers are not experts and their letters lack probative

value regarding the psychological and physical condition of Mr. [redacted]

Mr. [redacted] claim that his life would be in danger in Colombia is also not supported by any evidence in the record.

In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court stated further that the common results of deportation are insufficient to prove extreme hardship. In *Matter of Pilch,* Interim Decision 3298, (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation. 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. 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.