



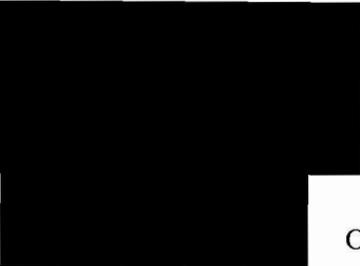
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date: JUL 18 2006

IN RE:

Applicant:



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, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 and reside with his U.S. citizen wife and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 2, 2004.

On appeal, counsel for the applicant contends that the district director failed to consider all elements of hardship to the applicant's family members. *Statement from Counsel on Form I-290B*, dated March 8, 2004. Counsel further asserts that the district director failed to balance positive and negative factors in rendering a decision. *Id.*

The record contains a brief from counsel; copies of marriage certificates for the applicant and his wife; a copy of the applicant's birth certificate; a copy of the naturalization certificate of the applicant's wife; a copy of the applicant's daughter's birth certificate; evidence that the applicant has transferred funds to Peru; evidence of the applicant's purchase of an automobile; tax records for the applicant and his wife; letters verifying the applicant's and his wife's employment; bank records for the applicant; a copy of the applicant's motor vehicle business license; copies of bills and receipts for purchases; a copy of the applicant's lease; documents relating to the applicant's and his wife's health insurance, and; documentation regarding the applicant's submission of a fraudulent marriage certificate to Citizenship and Immigration Services (CIS.) The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on May 20, 1997 the applicant presented a fraudulent marriage certificate to an immigration officer at an interview at the Chicago District Office that stated his date of marriage as October 21, 1987. Upon investigation, CIS discovered that the applicant had submitted the same fraudulent marriage certificate in connection with a Form I-817, Application for Voluntary Departure under the Family Unity Program, in order to obtain family unity benefits. The applicant admitted that the certificate was fraudulent, and that his true date of marriage is June 3, 1995. Thus, the applicant sought to procure benefits provided under the Act by fraud or willful misrepresentation. Accordingly, he 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems 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.

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).

On appeal, counsel contends that the district director failed to consider all elements of hardship to the applicant's family members. *Statement from Counsel on Form I-290B*, dated March 8, 2004. Counsel indicates that the district director failed to take into consideration relevant factors including "conditions in the country to which the [applicant's wife] would relocate; financial impact of departure from this country [and]; significant conditions of health, particularly when tied to unavailability of suitable medical care in the country where [the applicant's wife] would be relocated." *Brief in Support of Appeal* at 3, received July 27, 2004. Counsel contends that the district director erred in requiring the applicant to show that his wife's suffering will go beyond that which is common in similar situations. *Id.* at 3.

Counsel states that the evidence of record shows that the applicant's wife will experience significant financial hardship if the applicant departs, as she would be unable to meet her and her child's economic needs alone. *Id.* at 2. Counsel provided that the applicant's wife would be unable to afford their mortgage without the applicant, and she may have to obtain public assistance. *Brief in Support of Form I-601 Application*, dated

December 17, 2003. Counsel asserted that the applicant owns a business and a total of two real properties, and the business would collapse if he is no longer available to operate it. *Id.* at 3. Counsel asserts that the fact that the applicant's wife married the applicant at a time when his immigration status was in question does not lessen the financial hardship for her. *Brief in Support of Appeal* at 2.

Counsel provided that the applicant's wife has close ties to the United States, including a U.S. citizen daughter, her parents, and four siblings. *Brief in Support of Form I-601 Application* at 3. Counsel indicated that the applicant's wife has never been to Peru, and she would face hardship in relocating there. *Id.* at 3.

Counsel stated that the applicant's wife and child would endure emotional hardship if the applicant is compelled to depart the United States, as they would lose the applicant's companionship and support. *Id.* at 2.

Counsel further asserts that the district director failed to balance positive and negative factors in rendering a decision. *Statement from Counsel on Form I-290B*. Counsel provided that the applicant has good moral character and a history of acting responsibly in the United States. *Brief in Support of Form I-601 Application* at 3.

Counsel asserts that hardship to the applicant's child should be considered to the extent that it creates hardship for the applicant's wife. *Brief in Support of Appeal* at 2.

Counsel asserted that the applicant himself will experience hardship if he returns to Peru, including a lack of employment opportunities and health risks. *Brief in Support of Form I-601 Application*.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and the applicant's daughter will endure if the applicant departs. However, hardship to the applicant or his child is not a direct concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant and his daughter will bear significant consequences if the applicant's waiver application is denied, only hardship to the applicant's wife may be properly considered in this section 212(i) waiver proceeding.

Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's hardship will create emotional hardship for the qualifying relative.

It is noted that the record lacks a statement from the applicant or his wife to describe prospective hardships to the applicant's relatives. Thus, the AAO must glean the prospective hardships to the applicant's wife by examining statements from counsel and the limited evidence in the record. However, it is further noted that without adequate documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the applicant's wife will experience significant financial hardship if the applicant departs the United States. However, the record does not show that the applicant's wife will be unable to meet her and her child's economic needs without the applicant's assistance. The applicant's wife works and she has held the same position since December 10, 1987 at an annual rate of \$35,713.60 as of January 30, 2004. Thus, the applicant's wife earns an income well above the 2006 poverty line for a family of two, evaluated as \$13,200. *See Form I-864P, Poverty Guidelines*. Counsel asserts that the applicant would be unable to continue his business activities from abroad. Yet, the applicant has not shown that his wife depends on income from his business. While the applicant's wife may be required to modify her present housing and standard of living to accommodate a lower household income, the record does not support that she will endure financial circumstances that rises to the level of extreme hardship.

Counsel stated that the applicant's wife and child would endure emotional hardship if the applicant is compelled to depart the United States, as they would lose the applicant's companionship and support. As noted above, it is understood that emotional hardship to the applicant's daughter due to separation from the applicant would cause hardship to the applicant's wife. However, the applicant has not provided evidence or explanation to show that his wife's emotional difficulty would be greater than that which would commonly be expected of the families of those deemed inadmissible.

Counsel contends that the district director erred in requiring the applicant to show that his wife's suffering will go beyond that which is typical in similar situations. Yet, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA") on September 30, 1996, it is no longer sufficient to merely show the presence of a qualifying relative. An applicant must show that his qualifying relative will experience extreme hardship should the applicant's waiver application be denied. Section 212(i)(1) of the Act. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS*, *supra*, held further 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. Thus, it is appropriate for Citizenship and Immigration Services (CIS) to compare the circumstances of an applicant's qualifying relative to those that are common and expected of the family members of individuals who are excluded or removed. Based on the evidence of record, the applicant has not established that his wife's emotional hardship will rise to the level of extreme hardship.

The applicant's wife may relocate to Peru with the applicant if she chooses in order to maintain family unity. As a native of Mexico, it is likely that the applicant's wife speaks Spanish and thus she would not be compelled to adapt to an unfamiliar language. The record contains no documentation to reflect what employment opportunities the applicant's wife may expect to find in Peru. Yet, as the applicant owns real estate and a business in the United States, it likely that he can sell these holdings to finance his family's move and adjustment to Peru. The applicant has not shown otherwise. Counsel provided that the applicant's wife has close ties to the United States, and that her parents and four siblings reside here. However, the record contains no evidence to support that the applicant's wife's siblings and parents reside in the United States. It

is further noted that, as a U.S. citizen, the applicant's wife is not required to reside outside of the United States as a result of the applicant's inadmissibility.

Counsel indicates that the district director failed to take into consideration relevant factors including "conditions in the country to which the [applicant's wife] would relocate; financial impact of departure from this country; significant conditions of health, particularly when tied to unavailability of suitable medical care in the country where [the applicant's wife] would be relocated." *Brief in Support of Appeal* at 3, received July 27, 2004. Yet, as discussed above, the applicant has not provided documentation to reflect conditions in Peru. Nor has the applicant submitted evidence to show that his wife would endure significant financial hardship if she relocates to Peru. The record contains no documentation or explanation to show that the applicant's wife has health problems that cannot be properly treated in Peru. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the director's analysis is not deemed in error.

Counsel further asserts that the district director failed to balance positive and negative factors in rendering a decision. However, a balancing of positive and negative factors is only performed when assessing whether an applicant warrants a favorable exercise of discretion. If an applicant fails to first establish that a qualifying relative will experience extreme hardship, the district director lacks discretion to approve a waiver application. *See* section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would have been served in discussing whether he merits a waiver as a matter of discretion. Thus, the director's lack of discussion of factors that weigh in the applicant's favor was proper.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.