



U.S. Citizenship
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Services

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[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: JUN 15 2006

IN RE:

[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]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 Peru who was determined to be inadmissible to the United States pursuant to 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 by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 3, 2004.

On appeal, counsel contends that the applicant's spouse will suffer extreme hardship in the event that the applicant is removed to Peru. *Submission of Documents in Support of I-601 Appeal*, dated March 30, 2005. In support of these assertions, counsel submits a declaration of the applicant's spouse; a copy of the naturalization certificate of the applicant's spouse; a copy of the marriage certificate of the applicant and his spouse; proof of citizenship for the extended family members of the applicant's spouse; declarations of support; copies of family photographs; documentation evidencing scholastic achievement by the applicant's spouse; copies of tax and financial documents for the applicant and his spouse; copies of medical records for the applicant's spouse; letters from physicians treating the applicant's spouse; letters from physicians in Peru; a declaration of the applicant; proof of citizenship for the extended family members of the applicant's spouse; verification of the employment of the applicant and documents evidencing scholastic achievement by the applicant. The entire record was reviewed and considered in rendering a decision on the applicant's 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 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, during April 1996, the applicant presented a passport and visa issued to another individual to United States Government officials in order to obtain admission to the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. 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 that suffered by 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board 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.

On appeal, the applicant's spouse states that she was abandoned by her parents at a young age and subsequently traveled to the United States to be reunited with her mother and siblings. *Declaration of Mrs. [REDACTED] in Support of I-601 Waiver for Spouse [REDACTED]* dated March 24, 2005. The applicant's spouse indicates that an uncle sexually molested her when she was 12 years old. *Id.* The applicant's spouse explains that as a result of these childhood experiences she felt insecure and isolated. *Id.* ("I felt that I was alone in the world, and that I can [sic] only depend on myself for protection."). She states that she is able to confide in the applicant and is fearful of being separated from him. *Id.* The applicant's spouse further expresses that she participates in psychological therapy as a result of her childhood experiences and in order to cope with the immigration issues confronted by the applicant. *Id.* The record contains a letter from a mental health professional who, at the time of the letter, had provided counseling to the applicant's spouse for a period of approximately two months. *See Letter from [REDACTED]* dated February 15, 2005. The writing professional concludes that the stress of the immigration situation of the applicant is a problem for the applicant's spouse and triggers the early trauma she suffered as a result of separation from family members. *Id.* While the AAO respects and considers the opinions of any mental health professional, the documentation offered on appeal is rendered unpersuasive by the fact that the writing professional has a limited history of treating the applicant's spouse and the record fails to provide the writing professional's credentials. The AAO acknowledges that the record contains documentation establishing that the applicant's spouse sought psychological counseling prior to the treatment covered by the aforementioned letter, however the record fails to establish the success of the treatment previously received by the applicant's spouse or whether or not medication has been prescribed to the applicant's spouse. More generally, the record does not demonstrate that the presence of the applicant is necessary in order for the applicant's spouse to remain psychologically and emotionally stable.

Counsel contends that the applicant's spouse would face extreme hardship if she relocated to Peru in order to remain with the applicant because the couple is attempting to conceive a child with the assistance of fertility treatment and could not obtain comparable care in Peru. *See Letter from [REDACTED] Gynecology-Obstetrics Doctor* and accompanying English translation (stating that Peru does not possess the medical

technology to treat infertility) and *Letter from Dr. [REDACTED]* and accompanying English translation (indicating that only low complexity methods are available in Peru). The AAO notes that the record does not demonstrate whether or not the applicant and his spouse have experienced success with fertility treatment and therefore the record does not establish that suspension of fertility treatment for the applicant and his spouse forms the basis for a finding of extreme hardship. Beyond the fertility issue, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address any hardship that would confront the applicant's spouse as a result of relocation to Peru in order to reside with the applicant including, but not limited to the conditions in Peru, the extent of the applicant's spouse's ties in Peru and the financial impact of departure from the United States.

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. Moreover, the AAO notes that 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. The AAO recognizes that the applicant's spouse would endure a certain amount of hardship as a result of relocation or due to separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 he 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. *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.