



U.S. Citizenship
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FILE:



Office: LIMA, PERU

Date: JUN 15 2006

IN RE:



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: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Lima, Peru. 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 attempted to procure 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). She 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 her spouse.

The acting officer in charge 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 Acting Officer in Charge*, dated November 29, 2004.

On appeal, the applicant's spouse contends that the applicant did not misrepresent a material fact when she attempted to obtain admission to the United States on September 19, 2000. The applicant's spouse asserts that he is suffering extreme hardship in the absence of the applicant owing to a medical condition and his need to have the applicant with him in the United States at this time. *Form I-290B*, dated December 22, 2004. In support of these assertions, the applicant's spouse submits a brief; a statement from the applicant; a death certificate with English translation for the previous spouse of the applicant; a copy of the divorce decree of the applicant's spouse and his previous spouse and an incomplete act of marriage certificate for the applicant and her current spouse. 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, on September 19, 2000, the applicant misrepresented a material fact in a sworn statement given during removal proceedings.

The AAO acknowledges the assertion of the applicant's spouse that the applicant did not misrepresent a material fact on September 19, 2000 because he and the applicant were not married at that time. *Form I-290B*. However, both the applicant and her spouse acknowledge that the applicant failed to indicate that she knew anyone in the United States at the time in question. *See Brief*, dated December 22, 2004 ("If she said that she didn't know anyone in U.S.A. is [sic] because of [sic] she believed she could damage me..."); *see also Letter from* [REDACTED] dated September 10, 2004 ("This second travel I sworn before the Immigration Officer about my status in a bad way [sic], because I was so nervous [sic] and I said that I didn't know anybody in the United States..."). The explanation of the applicant's spouse that the applicant misrepresented a material fact in order to avoid "damaging" him does not excuse the underlying misrepresentation. Moreover, the record reflects that the applicant was returning to the United States in order to resume employment. As the acquiring of employment is inconsistent with the nonimmigrant visa category under which she sought admission, the applicant's presentation to immigration officials on September 19, 2000 was correctly determined by a consular officer to include misrepresentations of material fact.

The applicant's spouse asserts that the purpose of section 212(a) of the Act is to "prevent the entry of criminals, terrorists, etc. into the United States" and as the applicant does not fall into one of these categories, the statute should not be applied to her. *Brief*, dated December 22, 2004. The AAO finds this contention wholly without merit owing to the fact that the language employed in the pertinent part of the statute fails to limit itself to application against "criminals, terrorists, etc." and the applicant's spouse fails to provide any evidence in support of his assertion to the contrary.

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 herself 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.

The applicant's spouse contends that he has developed hernias and requires the assistance of the applicant in recuperating from an operation to be performed on him. *Brief*. While the AAO sympathizes with the plight of the applicant's spouse, the record fails to offer documentation substantiating his medical condition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record fails to establish the nature and severity of the applicant's condition or the extent and duration of

the assistance that he requires after his surgery. In the absence of such information, the AAO is unable to render a finding of extreme hardship based on the medical condition of the applicant's spouse.

In addition, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address 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.

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 endures hardship as a result of separation from the applicant. However, his 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 she 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.