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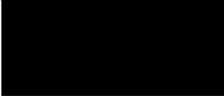
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LIMA, PERU

Date:

JAN 11 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 is married to a U.S. lawful permanent resident (LPR) and is the beneficiary of an approved petition for alien relative. She seeks to adjust her status to that of LPR; however, she was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having attempted to enter the United States on August 29, 2000 by presenting a Peruvian passport with a U.S. visitor visa belonging to another individual. The applicant seeks a waiver of inadmissibility in order to enter the United States as an LPR and live with her husband.

The officer in charge denied the waiver application after concluding that the applicant had failed to establish extreme hardship to her LPR spouse. On appeal, the applicant asserts that her husband is sad and his life is not complete without her. The entire record was reviewed in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The officer in charge based the finding of inadmissibility under this section on the applicant's admitted use of a Peruvian passport belonging to another person to procure admission into the United States in 2000. The applicant was expeditiously removed on August 30, 2000. The applicant does not contest the officer in charge's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien herself is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the

qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record in the instant case contains a psychological evaluation performed by [REDACTED] Psy.D. on December 15, 2004. [REDACTED] wrote that the applicant's husband felt fortunate to have a good job and siblings living nearby, but that he was lonely due to the applicant's absence. [REDACTED] found that the separation from the applicant aggravated the applicant's husband's chronic anxiety, and he concluded that it is probable that the applicant's husband would become more severely depressed if the applicant is not allowed to join him in the United States. The AAO acknowledges that the applicant's spouse will be faced with continued emotional hardship in the applicant's absence; however, nothing in the evaluation indicates that the applicant's husband's experience would be more negative than that of similarly situated individuals, such that his suffering could be considered extreme.

In a letter written on March 17, 2005, the applicant's husband stated that he left Peru because it was impossible to find a job that would pay a living wage. He also noted that common crime is rampant in Peru, rendering the entire country unsafe. The record, however, does not contain documentation to support the contention that the applicant's husband would be unable to find suitable employment in Peru, or that he would be at a higher risk of personal harm in Peru than elsewhere.

Although the applicant's husband's concerns are not taken lightly, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there exists affection and emotional and social interdependence, and a separation or involuntary relocation nearly always results in considerable hardship to individuals and families. Yet in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further,

demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her LPR spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.