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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: LIMA, PERU Date: **APR 15 2008**

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 Officer-in-Charge (OIC), Lima, Peru, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Peru, was found 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 is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to re-enter the United States and join his wife and children.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the only qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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.

At the outset of its analysis, the AAO rejects counsel's assertion on appeal that Citizenship and Immigration Services (CIS) bears the burden of proving inadmissibility. In support of his assertion, counsel cites to *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 87 S.Ct. 483 (1966); *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1979); and 8 C.F.R. § 240.46(a). The regulation cited by counsel is not currently included in the regulations under 8 C.F.R. However, in prior versions of the regulations 8 C.F.R. § 240.46(a) related to proceedings to determine deportability for proceedings commenced prior to April 1, 1997 and are therefore not relevant to a finding of inadmissibility. *Woodby* and *Bosuego* were also related to deportation cases. The instant case is not a deportation case; in this case the applicant is applying for admission into the United States. Section 291 of the Act, 8 U.S.C. § 1361, states, unequivocally, that the burden of proof in such a case is on the applicant:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter . . . If such person fails to establish to the satisfaction of the consular officer that

he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not inadmissible under any provision of this chapter.

Counsel's citations are, therefore, misplaced.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant lived and worked in the United States, without authorization, from 1972 through 1981. He appeared at the United States consulate in March 1981 for a tourist visa interview. The applicant did not disclose his previous unauthorized stay in the United States, and the tourist visa was granted. Accordingly, the applicant is 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 AAO will next address counsel's assertion on appeal that the OIC's determination that the applicant committed misrepresentation at his 1981 tourist visa interview had no basis.¹ The AAO notes that the applicant freely admitted that he committed misrepresentation on two separate occasions. In his May 17, 2005 letter, the applicant stated that his "visa was cancelled in Lima for having lied about not having ever been to the United States," and that "[m]y only real offense was lying; claiming that I had never been to the United States." In his July 4, 2005 letter, the applicant stated that, on March 25, 1981, "I shamefully lied and was able to get the B-2 tourist visa . . ." Thus, the AAO finds counsel's assertions unconvincing and will adjudicate the waiver application on its merits.

A section 212(i) waiver of the bar to admission resulting from a 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 applicant or his children experience upon denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that 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).

The applicant is required to demonstrate that his wife would face extreme hardship in the event the waiver application is denied, regardless of whether she joins him in Peru or remains in Virginia without her.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

¹ Counsel makes a similar assertion regarding the OIC's statement that the applicant had run a brothel, but that the 10-year statute of limitations had expired. However, while that finding was noted in the decision it was not the basis for the OIC's denial.

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 section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

The record reflects that the applicant’s wife is a sixty-three-year-old citizen of the United States. She and the applicant have been married since November 6, 1964. They have three adult children (two are United States citizens, and one is a lawful permanent resident of the United States) together. The applicant has had three additional children from another relationship since his return to Peru.

The record contains two letters from the applicant and one letter from his wife. In his May 17, 2005 letter, the applicant calls his wife his ex-wife, as they have been separated since his tourist visa was cancelled in 1985 for having lied to the Department of State about not having ever been to the United States; that his only wish is to see his children and grandchildren; that his only offense is that he lied; that, while he was in the United States, he often worked two shifts a day to support and educate his children and that, as a result, they are now professionals; and that he returned to Peru in order to find a way to legally re-enter the United States.

In his July 4, 2005 letter, the applicant states that he has three lumbar hernias and is only able to walk after receiving painkillers; that he suffers from allergies and asthma attacks; that his wife has cancer; that he has not seen his children (the three children he has with his wife) in over twenty years; that he has never met his children’s spouses; that he has never met his grandchildren; and that he and his wife did not bring the children back to Peru because of terrorism, bombings, kidnappings, and total chaos.

In her April 2005 letter, the applicant’s wife states that his 22-year absence has created a great deal of hardship, both financial and emotional; that the applicant was the victim of an attempted kidnapping in 1987; that she and the children were unable and unwilling to visit the applicant in Peru as a result of the dangerous situation there; that it is not within the family’s means to visit the applicant in Peru; and that she is suffering from colorectal cancer requiring surgery and chemotherapy, and that she is concerned that the time she has remaining to visit Peru is limited.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding

that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to remain in Peru, regardless of whether she joins him in Peru or remains in Virginia without him. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s wife will face extreme hardship if the applicant is refused admission. The record does not demonstrate, nor has counsel asserted, that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be any greater than that normally to be expected upon separation. The costs, both financial and emotional, of separation and the maintenance of two households are faced by everyone in the applicant’s wife’s situation, and the record fails to establish that the hardships she would face would be greater than those faced by others. Also, the AAO notes that the record contains no evidence to document any of the claims made by the applicant’s wife regarding her medical condition. Simply 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)). Nor does the applicant’s wife state how, if denial of the waiver application would cause extreme hardship, she has been able to manage her daily affairs for twenty years without him. Although CIS is not insensitive to her situation, the record as it currently stands does not establish that the hardship the applicant’s wife would experience if the waiver were denied rises to the level of “extreme” as contemplated by statute and case law.

Nor has the applicant established, or counsel asserted, that his wife would face extreme hardship if she joins the applicant in Peru, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation. Diminished standards of living and cultural adjustment are to be expected in the applicant’s wife’s situation, and the applicant has failed to establish that the security situation in Peru is dangerous at the present time.

While counsel is correct to note that family unity is one of the purposes of a waiver of inadmissibility, the applicant must, nonetheless, first meet the statutory requirement of extreme hardship to a qualifying family member: in this case, the applicant’s wife. As set forth above, the applicant has failed to do so.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his wife would suffer hardship unusual or beyond that normally expected upon separation from a spouse. As noted previously, the common results of removal or refusal of entry are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of removal or refusal of entry and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.