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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LIMA, PERU

Date: OCT 03 2008

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of Peru who was found 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the OIC denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC, dated July 11, 2006.*

The AAO will first address the finding of inadmissibility. 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.

Citizenship and Immigration Service records reflect that the applicant was expeditiously removed from the United States in June 2000 for attempting to enter the United States by presenting to an immigration inspector his brother's Peruvian passport and Lawful Permanent Resident ADIT stamp. The OIC was correct in finding the applicant inadmissible under section 212(a)(6)(C) for willfully misrepresenting a material fact, his true identity, so as to gain admission into the United States.

The AAO will now consider whether the grant of a waiver of inadmissibility is warranted. 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.

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 to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's naturalized citizen father and lawful permanent resident mother. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).*

In the appeal brief, the applicant asserts that the submitted evidence establishes extreme hardship to his parents if the waiver application were denied.

To establish that the applicant's father or mother would experience extreme hardship if they remained in the United States without him, the record contains a letter by [REDACTED] with Del Carmen Medical Center, a letter by the applicant's father, a letter by the applicant, and medical records of the applicant's mother, and a Biographic Information form, which are described as follows:

- The letter dated June 22, 2006, by [REDACTED] conveyed that although the applicant's father is employed as a car washer, for the past year he had difficulties with his memory and required assistance from others. [REDACTED] stated that the applicant's 62-year-old father conveyed that he has forgetfulness and difficulties with words, has decreased job functioning, does not travel alone and is taken to and picked up from work, and requires assistance managing a checkbook and does not perform complex activities at the house. [REDACTED] categorized the applicant's father as having mild to moderate Alzheimer's disease. With the Folstein Scale mental examination, [REDACTED] indicated that the applicant's father displayed a moderate level of dementia because he could not identify the season or the date or the current month; could not recall three objects in a row; had difficulties performing one-step arithmetic calculations; was unable to write a full sentence, **completing** only one word; and had difficulty drawing an intersecting pentagon. He stated that Mr. [REDACTED] was said to have diabetes mellitus. [REDACTED] indicated that the applicant's father's health will continue to deteriorate without close management and assistance. He indicated that he wrote the letter so that the applicant could come to the United States to live with and assist his parents.
- The January 13, 2006 letter by the applicant's father indicated that the applicant lives alone in a house in Peru and that the applicant's sister is married and has her own family. The applicant's father conveyed that for the past eight years he financially supported the applicant, and he and his wife have been emotionally devastated without him, and that he is their youngest son. He stated that in 2004 his wife was hospitalized for four days for a stroke, and he and she would benefit emotionally and financially if the applicant was able to work and care for them. The applicant's father stated that he pays his wife's medical bills with their savings and his wife does not work.
- The applicant's letter dated January 13, 2006, states, in part, that the applicant was living with his grandmother, who passed away in 2003, and that his parents send him money to pay the house bills. He states that his parents are old and cannot continue to support him, especially because they must pay his mother's medical bills. He states that he asks to be allowed into the United States to help out his parents financially and emotionally.
- The University of California, [REDACTED] discharge summary signed on July 12, 2004, reflects the applicant's 62-year-old mother lives with her husband and son, was discharged with full self-care, and was diagnosed with a stroke.
- The undated Biographic Information shows the applicant's father was a driver with Lexus from October 2005 to the present time. The record indicates that the applicant was employed as a promoter and is now a student. *Biographic Information; Application for an Immigrant Visa.*

In rendering this decision, the AAO has carefully considered the evidence in the record.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning” and establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s qualifying relative must be established in the event that he or she joins the applicant, and alternatively, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The applicant indicates that he will be able to financially support his parents if he were in the United States; however, no documentation has been submitted to demonstrate his parents would experience extreme financial hardship without his assistance. There are no records of the income and household expenses of the applicant’s parents showing that their income is insufficient for their monthly expenses. 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). Furthermore, the record shows the applicant’s parents have two sons residing in the United States, and the discharge summary indicated that in 2004 one of their sons lived with them. The applicant presented no documentation to demonstrate his brothers are unable to financially support and assist their parents.

The applicant’s father indicates that he and his wife require the applicant’s emotional support. Courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, administrative and court decisions have held that family separation does not categorically demonstrate extreme hardship. The Ninth Circuit held that separating an applicant from his wife and child did not conclusively establish extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9<sup>th</sup> Cir.1980) (severance of ties does not constitute extreme hardship). In *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9<sup>th</sup> Cir.1981), the court conveys that separation of parents from an alien son is not extreme hardship where other sons are available to provide assistance. And in *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record shows that the applicant’s father and mother are very concerned about separation from their son. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s parents, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s parents, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Guadarrama-Rogel*, and *Sullivan*, *supra*. Furthermore, the applicant’s parents are not alone in the United States, they have other sons here.

The letter by [REDACTED] conveys that the applicant’s father has Alzheimer’s disease and diabetes and requires assistance from a family member such as the applicant. The record shows that the applicant’s parents have two sons in the United States, one of whom lived with them in 2004. No documentation has been provided to show that the sons in the United States cannot provide care for the applicant’s parents. 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).

The applicant makes no claim of extreme hardship to his father or his mother if they were to join him to live in Peru.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i). 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.