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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

SEP 17 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and 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 found to be 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 having procured admission into the United States by fraud or willful misrepresentation in 1990. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside with her family in the United States.

The district director concluded that the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. The application was denied accordingly. *Decision of the District Director*, dated September 13, 2005.

On appeal, counsel submits documentation to show that the applicant's U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Counsel states that if the applicant's spouse is separated from the applicant, he will not be able to care for their children on his own and if he relocates to Peru with the applicant, he will not be able to find employment and their standard of living will be greatly reduced. *Counsel's Brief*, dated October 11, 2005.

The record indicates that the applicant claimed to be married in order to obtain a visitor's visa to the United States and upon entering the United States on December 13, 1990 she again indicated to the immigration officer at the Miami port of entry that she was married. *Applicant's Sworn Statement*, dated March 24, 2004; *Applicant's Affidavit*, undated.

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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or her children experience

due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant 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 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.

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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Peru and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Peru. Counsel states that the applicant's spouse, although a native of Peru, would suffer extreme hardship as a result of relocation because he will face a decline in his standard of living. *Counsel's Brief*, dated October 11, 2005. Counsel states that joblessness lingers in Peru and as a 62 year old, the applicant's spouse will suffer fierce competition from younger workers in Peru and would lose his social security benefits. *Id.* The AAO notes that the record does not include any documentation to support counsel's statements. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, 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) ("lower standard of living in

Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“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”); *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).

The AAO notes that the record contains a November 15, 2005 psychological report completed by [REDACTED], a psychologist, regarding the applicant’s inadmissibility and its effects on the applicant’s family. With regard to relocation, the psychological report finds that if the applicant’s family relocated to Peru it would be devastating as most of their family lives in the United States and they would not be able to maintain their standard of living in Peru. *Psychological Report by [REDACTED]* dated November 15, 2005. [REDACTED] states that if the family were to relocate, the applicant’s spouse would suffer a significant loss of esteem and dignity as he is, “very highly identified with his work,” which is 75 percent of his life. [REDACTED] states that the applicant’s spouse’s mother is in poor health and has been diagnosed with various medical ailments. He states that the applicant’s spouse helps his mother with her medical care and if he were to relocate to Peru, he would not be able to help her with her medical bills. [REDACTED] further finds that the applicant’s children would be seriously disadvantaged if they were to move to Peru as they are fully identified with American culture, are not fluent in Spanish and would not have the educational benefits currently available to them. [REDACTED] also notes that even the possibility of relocating to Peru has resulted in family members manifesting numerous symptoms associated with anxiety and depression. In the case of the applicant’s spouse, his anxiety is apparent in his foot tapping, headaches, acid reflux and increasing forgetfulness. *Id.*

While the AAO acknowledges [REDACTED]’s statements regarding the economic impact of relocation on the applicant’s family and the role that the applicant’s spouse plays in his mother’s healthcare, it notes that no documentation was submitted to support them and finds that, by themselves, these observations are not sufficient proof of extreme hardship. *See Matter of Soffici, supra*. Moreover, although the input of any mental health professional is respected and valuable, the submitted report is based on interviews of five individuals that took place during one week, from October 28, 2005 to November 3, 2005. The record, therefore, fails to reflect an ongoing relationship between [REDACTED] and the applicant’s spouse. Accordingly, the conclusions reached in the report regarding the applicant’s spouse do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. Further, the AAO notes that [REDACTED]’s assessment of the effects of relocation on the applicant’s children, who are not qualifying relatives in this matter, fails to indicate how the hardship they would experience would affect the applicant’s spouse. As a result, this aspect of [REDACTED]’s evaluation will not be considered. Therefore, the AAO finds that the current record does not show that the applicant’s spouse will suffer extreme hardship as a result of relocating to Peru.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant has three children and the applicant’s spouse has two children. *Counsel’s Brief*, undated. He states that the applicant and her spouse are raising the

minor children jointly and the applicant's spouse relies on the applicant to take care of everything related to the care of their children and home. Counsel states that the applicant's spouse works two jobs to provide for the family and if the applicant were removed from the United States her spouse would have to reduce his working hours to care for the children resulting in a direct economic hardship. Counsel also states that the applicant's spouse would have the duty of fathering his stepchildren without the presence of their mother. In particular, counsel states that the applicant's child, [REDACTED] recently completed counseling at Albany Park Community Center due to grieving the loss of her father who moved to another country and her grandparents who moved to another state. Counsel asserts that it would be an extreme hardship for the applicant's spouse to have to return his stepdaughter to extensive counseling to grieve the loss of her mother. *Id.* The AAO notes that the applicant offers no documentation to show that her children could not reside with her in Peru.

In the present case, the record of hardship includes a letter from the Albany Park Community Center attesting to the applicant's involvement in their After-School Childcare Program and her contributions to the community. *Letter from Albany Park Community Center*, dated April 28, 2004. The record also includes a letter from the applicant's children's elementary school, which states that the children are doing well in school. *Letter from William G. Hibbard Elementary School*, dated April 18, 2004. Letters from the Albany Park Multicultural Academy and the Von Steuben Metropolitan Science Center were submitted regarding the applicant's child, [REDACTED], and her exceptional academic performance. *Letter from Albany Park Multicultural Academy*, dated May 4, 2004; *Letter from Von Steuben Metropolitan Science Center*, dated April 30, 2004. In addition to the letters from the applicant's children's school programs, the record includes a letter from the social worker, [REDACTED], who counseled the applicant's child, [REDACTED]. This letter states that the applicant's daughter was in counseling from January 2003 to April 2004 concerning her grief over the relocation of her father and grandparents. *Letter from [REDACTED]*, dated May 12, 2004. Ms. [REDACTED] states that she feels the separation of the applicant from her daughter will cause her daughter great emotional suffering. *Id.* In his evaluation, [REDACTED] finds that the applicant's removal would result in a separation that would destroy the relationship and strong bond formed within the family. While, he reports that the applicant's spouse believes that separation from the applicant would be unbearable and does not know how he would be able to care for the applicant's children, [REDACTED] again focuses largely on the potential psychological impact of the applicant's removal on her children. He indicates that their behavior is already showing signs of the emotional devastation that would result from the applicant's removal and that projective personality tests confirm their depression and anxiety, as well as a strong focus on the applicant's possible removal. The AAO again notes that hardship to an applicant's child is not considered in section 212(i) waiver proceedings unless it is shown that hardship to the child will cause hardship to the applicant's qualifying relative. Other than unsupported statements made by counsel, the record does not address this connection. Therefore, based on the evidence of record, the applicant has failed to demonstrate that her spouse would suffer extreme hardship if he remained in the United States following her removal.

The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility, but the current record does not reflect that this hardship rises to the level of extreme hardship. 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.

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.