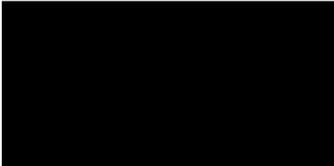




U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



H 4

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:



Office: LIMA, PERU

Date: 22 JAN 2002

IN RE: Applicant:



Application:

Application for Waiver of Grounds of Inadmissibility under
Section 212(a)(9)(B)(v) of the Immigration and Nationality Act,
8 U.S.C. 1182(a)(9)(B)(v), and under Section 212(i) of the
Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

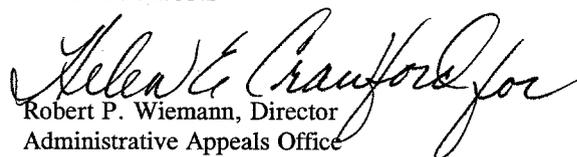
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, [REDACTED] and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found by a consular officer 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 attempted to procure admission into to the United States by fraud or willful misrepresentation; and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is married to a citizen of the United States and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to travel to the United States to reside with her spouse.

The 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 accordingly.

On appeal, the applicant's spouse submits documentation including letters from him, the applicant, and his prior spouse; evidence that his prior spouse was treated for cancer in 1996; and evidence that he is taking medication and receiving therapy for major depression and general anxiety disorder. The spouse states that he loves the United States, needs to have his family together, wants his home here, and that it would be perfect if the applicant were able to be with him.

The record reflects that the applicant initially entered the United States in or about June 1998 and was employed without authorization cleaning houses for several months. The applicant returned to Peru in or about September 1998 and reentered the United States as a nonimmigrant visitor in January 1999. She again obtained employment without authorization and remained longer than authorized.

In November 1999, the applicant obtained fraudulent temporary evidence of lawful admission as a permanent resident, an ADIT stamp, in her passport and used that documentation to obtain a social security card. She again departed the United States and in December 2000 attempted to return by presenting the fraudulent stamp. She was found inadmissible to the United States, withdrew her application for admission, and was ordered removed to Peru on December 27, 2000.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are



ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) 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.

* * *

(9) ALIENS PREVIOUSLY REMOVED.-

* * *

(B) ALIENS UNLAWFULLY PRESENT.-

(i) IN GENERAL.-Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the

citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

With regard to aliens who have been removed from the United States, Section 212(a) of the Act also provides:

(9) ALIENS PREVIOUSLY REMOVED.-

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under section 235(b)(1) [1225] or at the end of proceedings under section 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible...

(ii) OTHER ALIENS.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.-Clause (i)...shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

The applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the instant Application for Waiver of Inadmissibility (Form I-601) on March 19, 2001. On May 23, 2001, the officer in charge simultaneously denied both applications. Because the applicant has not received Permission to Reapply for Admission into the United States after Deportation or Removal, she remains inadmissible to the United States under section 212(a)(9)(A) of the Act.

Sections 212(a)(9)(B)(v) and 212(i) the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that waivers of the bar to admission resulting from inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act are dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for sections 212(a)(9)(B)(v) and 212(i) and relief, once established, it is but one favorable discretionary

factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See Matter of L-O-G-, 21 I&N Dec. 413 (BIA 1996).

It is noted that the requirements to establish extreme hardship in section waiver of inadmissibility proceedings do not include a showing of hardship to the alien as did former cases involving suspension of deportation. Waiver proceedings under section 212(a)(9)(B)(v) and 212(i) require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, 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 record reflects that the applicant and her spouse were married in Peru in January 2001. The applicant's spouse has two children from a prior marriage, a daughter who attends college and a son who resides with his father. On appeal, the applicant's spouse states that separation from the applicant has caused him to slip into a depression for which he is taking medication and seeing a therapist, that he feels sorry for himself and his family, is tired and not eating or sleeping well, his anxiety level is up, and normal things appear to him as big problems. He has lost patience with his son, is having trouble with decisions, and is negative to his customers which is leading to financial difficulties in his business. There is no evidence contained in the record to establish that the spouse has a significant condition of health for which treatment is unavailable in Peru.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The 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 spouse also states that if the applicant's waiver request is denied, an option to remaining separated from her would be for him to move to Peru to join her. He asserts that he would suffer financial hardship in Peru because it is a poor country with little opportunity for an English-speaking carpenter and there is no work available for him there. In addition, his states that his son would suffer by having to leave his friends and family in the United States.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

It is noted that the Ninth Circuit Court of Appeals in Carnalla-Muñoz v. INS, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in Matter of Tijam, Interim Decision 3372 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered in 1998 and was employed without authorization; entered the United States in 1999, remained longer than authorized, was employed without authorization, purchased fraudulent documentation, and used that documentation to procure a social security card; and she sought to procure readmission into the United States in 1999 by presenting the fraudulent documentation. The applicant was removed from the United States in 1999 and subsequently married her spouse. She now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside. Hardship to the spouse's son is not a

consideration in section 212(9)(B)(v) proceedings. 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 sections 212(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.