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U.S. Citizenship
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H14



FILE:



Office: LIMA, PERU

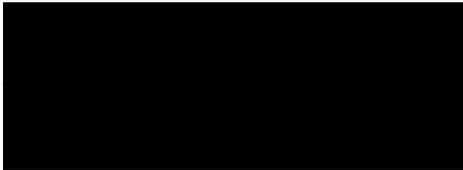
Date: **OCT 25 2005**

IN RE:



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

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Lima, Peru, 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 pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having attempted to procure admission to the United States by fraud or willful misrepresentation and for having been unlawfully present in the United States for more than one year. The applicant is the spouse of a citizen of the United States and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States with her spouse and child.

The acting 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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated May 25, 2004.

On appeal, counsel states that Citizenship and Immigration Services (CIS) erred in denying the application for waiver of grounds of inadmissibility. Counsel contends that the applicant has not demonstrated total disregard for immigration laws as found by the acting officer in charge and asserts that the CIS decision fails to take into account the health of the applicant's spouse and his hardship in caring for the applicant's daughter in the applicant's absence. *I-290B Appeal from Denial of Application for Grounds of Excludability under Section 212(a)(9)(B)(ii) and Section 212(a)(6)(C)(i) of the Immigration and Nationality Act*, undated. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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:

- (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(a)(9)(B) of the Act provides, in pertinent part:

- (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 or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

In the present application, the record indicates that the applicant entered the United States with a valid visitor visa on September 8, 1993. The applicant subsequently applied for political asylum; her application was denied and, on June 8, 1995, the applicant was granted 90 days of Voluntary departure from the United States. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 18, 2003, the date of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

The AAO notes that the decision of the acting officer in charge finds the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act in addition to citing grounds of inadmissibility under section 212(a)(9)(B), as described above. The decision of the acting officer in charge states that the applicant obtained fraudulent documentation that would enable her to work in the United States. Counsel contends that the applicant has not indicated whether or not she presented the fraudulent documents to an employer. *I-290B Appeal from Denial of Application for Grounds of Excludability under Section 212(a)(9)(B)(ii) and Section 212(a)(6)(C)(i) of the Immigration and Nationality Act*. The AAO finds that even if the applicant did present fraudulent documents to an employer, presenting fraudulent documentation in order to gain employment from a private employer does not render the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act as employment is not benefit under the Act. The applicant did not make false statements or present fraudulent documentation to an immigration or government official in order to obtain an immigration benefit and therefore, is not inadmissible pursuant to section 212(a)(6)(C)(i). See *Matter of L-L-*, 9 I&N Dec. 324 (1961).

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's spouse would suffer hardship as a result of relocation to Peru in order to remain with the applicant. Counsel contends that the applicant's spouse suffers from chronic blood disease and would be unable to obtain adequate medical treatment in Peru. *I-290B Appeal from Denial of Application for Grounds of Excludability under Section 212(a)(9)(B)(ii) and Section 212(a)(6)(C)(i) of the Immigration and Nationality Act*. Counsel indicates that the applicant's spouse has no family ties in Peru and is unemployable there. *Id.*

The record fails to establish extreme hardship to the applicant's spouse if he remains in the United States in order to maintain access to adequate medical care and employment and proximity to family. Counsel asserts that the applicant assists in the care of her spouse. The applicant's spouse states that the applicant takes him to his medical appointments and in the applicant's absence, he is unable to travel from one place to another. *Declaration of Hector Cardona*, dated February 17, 2004. The record fails to establish that the applicant is the only person able to assist her spouse. Further, the record fails to demonstrate how the applicant's spouse managed his medical condition prior to meeting the applicant or the extent of the assistance he requires to perform routine tasks and daily functions. The record does not contain any statement from a medical professional establishing the nature and extent of the medical condition(s) suffered by the applicant's spouse. The AAO is unable to make a determination of extreme medical hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility based on the record as it currently stands. Counsel indicates that the applicant's spouse, although disabled, provides care to the applicant's daughter. *I-290B Appeal from Denial of Application for Grounds of Excludability under Section 212(a)(9)(B)(ii) and Section 212(a)(6)(C)(i) of the Immigration and Nationality Act*. The AAO notes that the Form I-601 filed by the applicant lists a different address for the applicant's spouse and daughter. The record fails to establish the living arrangements of the applicant's daughter and does not document the nature of any hardship imposed on the applicant's spouse as a result of any custodial duties he has assumed in relation to his stepdaughter.

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 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. Moreover, the AAO notes that the U.S. Supreme 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 AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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(a)(9)(B)(v) 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.