U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: Chicago, Illinois Date: SEP 14 2006

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.

Ellen C. Johnson

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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse, two U.S. citizen daughters, and one U.S. citizen step-daughter.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated December 27, 2004.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in finding the applicant inadmissible and in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B, dated January 28, 2005.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from the applicant's spouse, dated October 26, 2004; a copy of the marriage certificate to [redacted] dated February 14, 2001; a copy of the marriage certificate to [redacted] dated August 22, 1996; a copy of the marriage certificate to [redacted], dated June 8, 1995; a copy of the certificate of divorce from [redacted], dated October 17, 2000; a copy of the certificate of divorce from [redacted] dated June 22, 2000; a copy of the applicant's spouse [redacted] U.S. birth certificate; copies of the applicant's daughter's U.S. birth certificates; a copy of the U.S. birth certificate of [redacted] a copy of the U.S. birth certificate of [redacted] Form I-485 filed November 1, 2001; Form I-130 filed April 7, 2001 by [redacted] Form I-485 filed July 24, 1997; Form I-130 filed July 24, 1997 by [redacted] Form I-485 filed September 18, 1996; Form I-130 filed September 18, 1996 by [redacted] a copy of the applicant's Peruvian birth certificate; a copy of the applicant's Peruvian passport; tax statements; psychological assessment of the applicant, written by [redacted] MS Ed. and [redacted] dated February 10, 1999; clinical summary of the applicant, written by [redacted] dated January 22, 1999; and a Service notice of failure to appear, dated May 12, 1997; The entire record was reviewed and considered in rendering this decision.

The record reflects that on December 22, 1989 the applicant arrived without inspection to the United States. *Form I-485, dated November 1, 2001.* The applicant has not left the United States since he entered. *Form I-601*; *Form G-325A.* On June 8, 1995 the applicant married [redacted] a U.S. citizen. *Marriage Certificate, dated June 8, 1995*; *U.S. birth certificate of* [redacted] On August 22, 1996 the applicant married [redacted], a U.S. citizen. *Marriage Certificate, dated August 22, 1996; U.S. birth certificate of* [redacted]. On September 18, 1996 [redacted] filed a Form I-130 on behalf of the applicant, and on that same date, the applicant filed a Form I-485 listing [redacted] as his wife. *Forms I-130 and I-485, dated September 18, 1996.* On May 12, 1997 the Immigration and Naturalization Service (Service) denied the I-130 and I-485 applications based on the applicant's failure to

appear for his scheduled interview on those applications. *See Service Notice, Failure to Appear, dated May 12, 1997.* On July 24, 1997 [redacted] filed a Form I-130 on behalf of the applicant, and on that same date, the applicant filed a Form I-485 listing [redacted] as his wife. *Forms I-130 and I-485, dated July 24, 1997.* On June 22, 2000 the applicant divorced [redacted] *Divorce Certificate, dated June 22, 2000.* On October 17, 2000, the applicant divorced [redacted]. *Divorce Certificate, dated October 17, 2000.* On February 14, 2001, the applicant married [redacted], a U.S. citizen. *Marriage Certificate, dated February 14, 2001; U.S. birth certificate of* [redacted]. On April 7, 2001 [redacted] filed a Form I-130 on behalf of the applicant. *Form I-130, dated April 7, 2001.* The Service approved the Form I-130 on September 8, 2001. *Approval Stamp, Form I-130, dated April 7, 2001.* On November 1, 2001 the applicant filed a Form I-485 based on his marriage to [redacted]. *Form I-485, dated November 1, 2001.* On August 12, 2004 the Service denied the Forms I-130 and I-485 based on the applicant's marriage to [redacted] due to the applicant's divorce from [redacted] *Forms I-130 and I-485, dated July 24, 1997.* On December 27, 2004 the District Director denied the applicant's Form I-601 waiver of inadmissibility and Form I-485 application to adjust status based on his marriage to [redacted] The District Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act for misrepresenting himself in that he failed to disclose the filing of his Form I-485 application on July 24, 1997 based on his marriage to [redacted] *Decision of the District Director, dated December 27, 2004.* The District Director found that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated December 27, 2004.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The District Director erred in finding the applicant inadmissible under 212(a)(6)(C)(i) of the Act for failure to disclose the Form I-485 filed on July 24, 1997.

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.

The AAO does not find that the applicant's failure to disclose the previous Form I-485 application filed on July 24, 1997 was a material misrepresentation. The determination of materiality is a fact which would make the alien inadmissible or shut off a line of inquiry which may have resulted in inadmissibility. *Matter of S-& B-C-*, 9 I&N Dec. 436 (BIA 1960). The applicant did not state any facts on his Form I-485 filed on July 24, 1997 that were not disclosed to the Service on his Form I-130 filed on April 7, 2001 and Form I-485 filed on November 1, 2001. The applicant did not willfully misrepresent a material fact or commit fraud for his failure to disclose this previous Form I-485 application.

The AAO finds; however, that the applicant is inadmissible under section 212(a)(6)(C)(i) for filing Forms I-130 and I-485 with the Service on September 18, 1996. The applicant misrepresented himself to the Service as being married to [redacted], thus seeking adjustment of status and admission to the United States based on this marriage. *See Forms I-130 and I-485, dated September 18, 1996.* At the time of these applications, the applicant was still married to [redacted] *See Marriage Certificate to* [redacted] *dated June 8, 1995; Marriage Certificate to* [redacted] *dated August 22, 1996; Divorce Certificate from* [redacted] *dated June 22, 2000; Divorce Certificate from* [redacted] *dated October 17, 2000.* He therefore had no valid marriage to [redacted] and was not eligible to file Forms I-130 and I-485 based on this marriage. Thus, the applicant willfully misrepresented his marital status to gain a benefit under the Act for which he was not eligible, and such misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[1]

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse. If 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, 565-566 (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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Peru or the United States, as she is not required to reside outside of the United States based on the

[1] Although the applicant was holding himself out to be married to more than one person at the same time, the AAO does not find the applicant to be inadmissible under section 212(a)(10)(A), as he was not coming to the United States to practice polygamy.

denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Peru, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has spent her entire life living in the United States. *Attorney's brief.* She is the mother of three U.S. citizen children, and all of her family ties originate in the United States. *Id.* The applicant's spouse does not speak Spanish. *Id.* Although counsel asserts that there is no welfare system in Peru which could support the applicant's family until the applicant could find gainful employment (*Id.*), there are no objective country condition reports in the record to confirm this assertion, nor is there anything in the record that shows the applicant would be unable to contribute to his family's financial well-being from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse stated that the applicant is the primary financial support for the family. *Letter from the applicant's spouse, dated October 26, 2004.* If the applicant's spouse did not accompany him to Peru, she and the family would be forced to relocate to a new and less desirable apartment. *Id.* The applicant's spouse does not know how she would be able to work full-time, support their family, and take care of their children without her husband. *Id.* Counsel suggests that without the financial support of the applicant, there is a good possibility that the applicant's spouse and her three minor children would be forced to move to a dangerous, low income area or even become homeless. *Attorney's brief.* The mere showing of economic detriment to qualifying family members is insufficient to warrant findings of extreme hardship. *Jong Ha Wang v. INS*, 450 U.S. 139 (1981). Additionally, as previously mentioned, there is nothing in the record that shows the applicant would be unable to contribute to his family's financial well-being from a location outside of the United States. 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Peru.

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(a)(6)(C) 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.