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

H2

NOV 09 2005
Date:

[Redacted]

FILE: [Redacted]

Office: NEWARK (CHERRY HILL), NJ

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark (Cherry Hill), New Jersey, 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of 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.

The district director 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 District Director*, dated January 8, 2004.

On appeal, counsel asserts that the district director erred in denying the waiver application by applying incorrect law and disregarding the correct extreme hardship factors. *See Form I-290B*, dated February 2, 2004.

The record includes, but is not limited to, a brief, the applicant's affidavit, a psychological evaluation of the applicant's spouse, information on country conditions in Peru, a statement from the applicant's spouse, a birth certificate for the applicant's child and death certificates for the family members of the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States on February 25, 1995 using another person's passport. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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 notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel states that the district director erred in denying the waiver application by applying incorrect law and disregarding the correct extreme hardship factors. Counsel is correct in citing *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as the precedent case in extreme hardship analysis. Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision.

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 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 the applicant's spouse relocates to the Peru or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to show extreme hardship to her spouse in the event of relocation to Peru. The record indicates that the applicant's spouse has a son in the United States. Counsel asserts that the applicant's spouse has no family ties or other ties in Peru and that he does not speak, read or write Spanish. *Brief in Support of Appeal*, at 4, dated February 23, 2004. The AAO notes that there is no indication that the applicant's spouse cannot learn Spanish.

In regard to country conditions, counsel has submitted a U.S. Department of State Consular Information Sheet for Peru which details potential terrorist attacks against U.S. citizens. *See U.S. Department of State Consular Information Sheet for Peru*, dated June 24, 2003. However, the report also states that terrorist activities are generally restricted to sporadic incidents in specific rural areas of Peru. *Id.* There is no indication that the applicant's spouse would reside in one of these areas.

In regard to the financial impact of departure, counsel asserts that the applicant's spouse has no business ties in Peru. *Brief in Support of Appeal*, at 4. In addition, the applicant's spouse has two businesses in the United States. The record does not indicate whether the applicant's spouse could run these businesses from abroad or if he could sell them in order to alleviate any financial burden if he relocated to Peru with the applicant.

The second part of the analysis requires the applicant to prove extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that the applicant runs one of his offices and is a very valuable asset to the business. *Statement of the Applicant's Spouse*, at 3, undated. However, counsel provides no evidence that someone else cannot perform the same job duties as the applicant. By remaining in the United States, the applicant's spouse should be able to continue running his businesses and avoid financial hardship. The record indicates that the father, mother and sister of the applicant's spouse have passed away in the last several years and the applicant has provided emotional support throughout this time. Counsel has submitted a psychological evaluation for the applicant's spouse. The psychologist states that removal of the applicant would pose an extreme hardship on her spouse and that the applicant's spouse is suffering from

major depression and generalized anxiety disorder. *Psychologist's Report*, dated December 8, 2003. However, this is a one-time evaluation and there is no mention of a plan of treatment or therapy for the applicant's spouse.

After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to Peru or in the event that he remains in 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.

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 will endure hardship as a result of separation from the applicant and is sympathetic to his situation. 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.

The AAO notes that 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.