

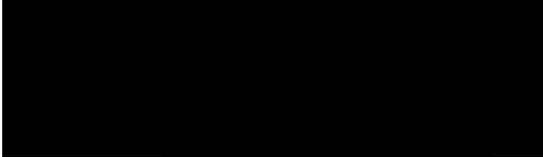


U.S. Citizenship
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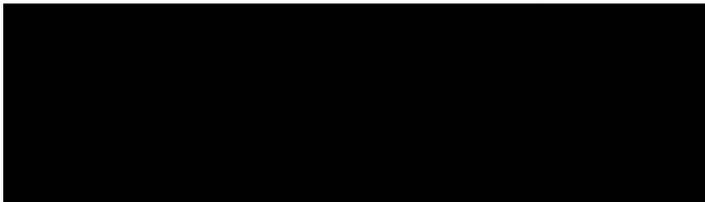
FILE: [Redacted] Office: CHICAGO

Date: APR 07 2006

IN RE: [Redacted]

PETITION: 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 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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application, and it 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States. She 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 her spouse.

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 March 1, 2004.

The record shows that, on July 21, 1992, the applicant attempted to procure admission to the United States by presenting a fraudulent Form I-688, Temporary Resident Card. On July 21, 1992, the applicant was permitted to withdraw her application for admission. However, on July 24, 1992, the applicant was paroled into the United States for the purpose of exclusion proceedings. The applicant did not depart the United States and exclusion proceedings were never commenced. The record reflects that, on September 26, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-140 Petition for Alien Worker (Form I-140) filed on behalf of the applicant's spouse. On November 19, 2002, the applicant appeared at CIS' Chicago District Office. The applicant testified that, when she presented the Temporary Resident Card for entry in 1992, she was unaware that it was fraudulent and had believed an attorney had legally obtained it on her behalf.

On November 5, 2003, the district director issued a request for further evidence to the applicant informing her of the need to file the Form I-601 with supporting documentation. On January 27, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On March 1, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because she had attempted to procure admission to the United States, by fraud or misrepresenting a material fact, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director failed to consider all factors when analyzing whether the applicant's spouse would experience extreme hardship upon the applicant's removal from the United States. *Brief In Support of Appeal*, dated June 30, 2004. In support of his contentions, counsel submitted the above-referenced brief and copies of documents previously submitted to prove extreme hardship. The entire record was reviewed and considered in rendering 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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

The record reflects that, on September 4, 1981, the applicant married her husband, [REDACTED] who is a citizen of Peru. On December 15, 1999, [REDACTED] became a lawful permanent resident of the United States. [REDACTED] has resided in the United States since 1982. The applicant and her spouse have a 16-year old daughter who is a U.S. citizen by birth and a 21-year old son who is a citizen of Peru and became a lawful permanent resident of the United States on December 15, 1999. The applicant's son underwent treatment for a chemical imbalance in May 1999. The record reflects further that the applicant and [REDACTED] are in their 50's and that [REDACTED] has no health concerns.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a fraudulent Temporary Resident Card to attempt to procure admission into the United States in 1992. Counsel contends that the district director's determination of inadmissibility is erroneous. Counsel asserts that the applicant was unaware that the Temporary Resident Card was fraudulent because she had obtained the Temporary Resident Card at the Miami District Office after she had consulted with an immigration attorney in Chicago, Illinois. Counsel charges that the Temporary Resident Card was issued to the applicant as part of a scheme perpetrated by an immigration officer at the Miami District Office. However, the record contains no evidence that the Temporary Resident Card was issued by an immigration officer, what the name of the officer was, and what the name of the attorney that took the applicant to the Miami District Office was. The applicant is a highly educated woman who speaks English fluently. The applicant claims that, despite residing in Chicago and being required to travel to Miami in order to obtain the document, she did not know that the Temporary Resident Card was fraudulent. It is highly unlikely, under the circumstances of the issuance of the card, presuming that the applicant's claim as to how the card was issued is correct, that a woman of the applicant's education would be unaware that there was some question as to the validity of the document. The AAO notes that the applicant entered the United States in a valid nonimmigrant status in August 1982, which remained valid until she left the United States in 1984 for a period of 1½ years before she returned to the United States in a valid nonimmigrant status that remained valid until the date on

which she claims she believed she was issued a legitimate Temporary Resident Card under amnesty. In order to qualify for amnesty an applicant had to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. *See* 8 C.F.R. § 245a. The applicant also had to establish that he or she had not been absent from the United States for more than forty-five (45) days for a single absence, as well as an aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period. *Id.* A woman of the applicant's education, who knew that she had entered the United States after the amnesty deadline of January 1, 1982 and had not resided continuously in an unlawful status in the United States from that date until May 1988, should have been aware that that she was not eligible to receive a Temporary Resident Card under amnesty. Counsel argues that the district director failed to investigate the applicant's charges that the Temporary Resident Card was issued as part of a scheme perpetrated by an immigration officer in the Miami District Office. However, as discussed above, the applicant has not provided any details with which an investigation could be commenced. Moreover, the burden of proof lies with the applicant and at no time has counsel provided any evidence to suggest that the applicant's claim of innocence is bona fide. The AAO agrees with the district director's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act for use of a fraudulent Temporary Resident Card in the attempt to procure admission to the United States.

Counsel contends that the district director failed to consider the combined effects of the financial and emotional hardships that [REDACTED] faces if his wife were to be removed from the United States.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen daughter and lawful permanent resident son will not be considered in this decision.

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 at 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 alien 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. *Supra.* at 566. The BIA has held:

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 statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

Counsel asserts that [REDACTED] would suffer financial hardship if he were to remain in the United States without his wife. The record reflects that the applicant and her husband own a home unencumbered by a mortgage and two rental properties encumbered by mortgages. Counsel contends that [REDACTED] would not be able to financially support himself, the applicant, and the children because he would be unable to manage the rental properties or meet the costs and personal attention required to run his own household and the rental properties. Counsel states that [REDACTED] would be forced to sell the rental properties and forfeit the income derived from them. From the financial records on file, it appears that [REDACTED] has contributed substantially to the couple's household income over the years, averaging 60%, or approximately \$84,000. The record does not support a finding of financial loss that would result in an extreme hardship to him if he had to support the family without the additional income provided by the applicant, approximately \$56,000. Even without the income derived from the rental properties [REDACTED] income is sufficient to support the entire family. Additionally [REDACTED] may be able to retain a substantial portion of the rental property incomes by employing an agency to manage the properties.

Counsel additionally asserts that [REDACTED] would suffer emotional hardship if he remained in the United States and his wife returned to Peru. In support of this contention, counsel submitted a psychological report, dated January 19, 2004, indicating [REDACTED] will be devastated in all areas of his life if his wife is removed from him." The report indicates [REDACTED] "has reported that he is afraid that he will decompensate emotionally without her . . . resulting in isolation and withdrawal from attending to his basic needs and that of the children . . . without her he will be at risk of a major depressive episode, which could play out symptomatically with self injury behaviors. This could include failure to eat, sleep, wish to die, or withdrawal into himself." The report did not indicate that [REDACTED] has undergone or continues to undergo treatment for any mental or physical illnesses that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Counsel contends that the report states that [REDACTED] dependency upon his wife is beyond the norm of forced separation. However, as discussed above, the report does not indicate what counsel purports it does-that [REDACTED] would suffer hardship beyond that commonly suffered by aliens and families upon deportation. Counsel contends that [REDACTED] will suffer emotionally because his son does not perform normally without the support of the applicant due to the son's emotional and psychological problems. The psychological report indicates [REDACTED] "oldest son [REDACTED] emotional problems since an early age . . . and I am seriously concerned and worried that [REDACTED] emotional deterioration will not be able to care for his son." The psychological report does not indicate that [REDACTED] would suffer emotionally due to the son's psychological issues, but that the son will suffer due to [REDACTED] inability to provide sufficient emotional support in the absence of his wife. As discussed above, hardship to the applicant's son is not permissible in determining extreme hardship. Moreover, the only letter in regard to the applicant's son's condition is a letter from [REDACTED] Greendale, dated, July 28, 1999, indicating [REDACTED] was admitted to [REDACTED] Hospital in May 1999 where he was evaluated for his behavioral problems and found to have a chemical imbalance. At that point in time he was placed on two psychotropic medications and had a good response to the medication . . . I have seen him on July 14, 1999

and find that his previous behavior is totally under control and has been so since his discharge from the hospital.” There is no evidence in the record to suggest that [REDACTED]’s son is currently on medication or receiving psychological treatment. The AAO notes that the report does not indicate that [REDACTED] has a history of mental problems, or that [REDACTED] **suffers from a mental illness** that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. In addition, the report was based on a single meeting with [REDACTED] and the psychologist did not indicate a diagnosis or prognosis for [REDACTED]. **The report can, therefore, be given little weight.**

Counsel contends that [REDACTED] would suffer hardship if he returned to Peru with his wife. However, the record reflects that, even though he has resided in the United States for over 28 years, [REDACTED] did not become a legal permanent resident of the United States until 1999. [REDACTED] a native of Peru who resided there until at least the age of 29. Counsel contends that [REDACTED] would be unable to find employment in Peru and would be forced to sell his properties in the United States, the sale of which would not be sufficient to support the family. There is no evidence in the record to **suggest that [REDACTED] would be unable to find employment in Peru or that the money earned from the sale of [REDACTED]’s United States properties would not be sufficient to financially support the family.** The sale of these properties may generate income sufficient to aid in the transition back to Peru. In the alternative, there is no evidence in the record to suggest that [REDACTED] would be unable to hire a management agency to manage the rental properties in his absence, providing [REDACTED] with continued, although slightly decreased, income from rental properties in the United States. Counsel claims that [REDACTED] would be unable to obtain employment in Peru. However, there is no evidence to indicate that [REDACTED] or the applicant would be unable to obtain employment in Peru. Counsel contends that [REDACTED] would suffer emotional hardship should he return to Peru and leave his son and daughter in the United States. The psychological report does not address this scenario and the record contains no evidence to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, the applicant and [REDACTED]’s family members reside in Peru and there is **no evidence** in the record to suggest that these family members could not provide support to the applicant and [REDACTED] both financially and emotionally. Finally, the AAO notes that, as a lawful permanent resident of the United States, the applicant’s spouse is not required to reside outside of the United States as a result of denial of the applicant’s waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927

F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *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 therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.