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U.S. Citizenship
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Services

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FILE: [Redacted]

Office: LIMA Date: **DEC 26 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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Lima, Peru, 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 Immigration and Nationality Act (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 naturalized U.S. citizen. 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 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 Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 24, 2005.

The record reflects that, on June 4, 1999, the applicant applied for admission at the Newark, New Jersey, Port of Entry. The applicant presented a fraudulent passport and U.S. nonimmigrant visa. The applicant was placed into secondary inspections where she admitted that she had obtained the fraudulent documentation for \$3,000. The applicant was removed from the United States and returned to Peru. On June 26, 2002, the applicant married her spouse, [REDACTED]. On January 10, 2003 the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on October 14, 2003.

On August 30, 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 appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the applicant were denied a waiver. *See Form I-290B*, dated June 7, 2005. In support of his assertions, counsel submitted the above-referenced Form I-290B and medical documentation in Spanish. The entire record was reviewed and considered in rendering a decision in this case.

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.

The officer in charge based the finding of inadmissibility under section 212(a)(6)(C) of the Act on documentation in the record and the applicant's admitted use of a fraudulent passport and visa to attempt to procure admission into the United States in 1999. Counsel does not contest the officer in charge's determination of inadmissibility.

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

- (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.

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.

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. *Id.* 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 record reflects that [REDACTED] is a native of Peru who became a lawful permanent resident in 1994 and a naturalized U.S. citizen in 2002. The applicant and her spouse have no children. The record reflects further that the applicant and [REDACTED] are in their 30's and there is no evidence that [REDACTED] has any health concerns.

Counsel asserts that [REDACTED] would suffer extreme hardship if he were to remain in the United States without the applicant because the applicant requires intensive fertility treatments in order to become a mother,

which have been frustrated by the applicant and [REDACTED] separation. Counsel asserts that [REDACTED] and the applicant cannot afford such treatments in Peru but that his medical insurance in the United States would cover the treatments in the United States. [REDACTED] in his affidavit, states that the applicant and he would like to start a family together as soon as possible but that their separation has kept them from doing so. He states that the applicant gives him the strength to go on and because of her he has returned to finalize his studies and that he presently suffers extreme hardship because of their separation. He states that trying to cope as a lonely husband has caused him severe emotional distress.

The AAO notes that the medical documentation in the record is in the Spanish language and has no translation. Any document containing a foreign language shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(a)(3). As such, the AAO is unable to consider the medical documentation as evidence. Even if counsel had provided evidence that the applicant required fertility treatments, while it is unfortunate that the applicant would not be able to afford such treatments in Peru, this is not a hardship that is beyond that commonly suffered by aliens and families. Additionally, while it is unfortunate that [REDACTED] would be separated from a spouse who has given him the strength to return to his studies and he is a lonely husband, this is also not a hardship beyond that commonly suffered by aliens and families. There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

Counsel asserts that [REDACTED] would suffer extreme hardship if he accompanied the applicant to Peru because the applicant and he would be unable to obtain the necessary fertility treatments in Peru. As discussed above, there is no evidence in the record that the applicant requires fertility treatments that are unavailable in Peru. There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness for which he would be unable to receive treatment in Peru. Additionally, while the hardship faced by [REDACTED] with regard the unavailability of fertility treatments in Peru are unfortunate, they are not beyond the hardships experienced by any spouse accompanying a deported alien to a foreign country. Finally, the AAO notes that, as a U.S. citizen, 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 and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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.