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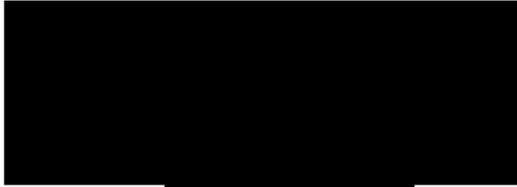
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

Office: LIMA, PERU

Date: APR 04 2007

IN RE:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Peru, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with her United States citizen husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband, a United States citizen, would suffer extreme hardship if the applicant were required to remain in Peru. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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 states, in pertinent part, the following:

- (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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant attempted to enter the United States through fraud. Specifically, the record reflects that after a previous visa overstay of two months,¹ the applicant paid a fee of \$100 to obtain a counterfeit Peruvian entry stamp in her passport which reflected an earlier entry date in an effort to conceal this overstay from United States immigration authorities at Atlanta Hartsfield International Airport in Atlanta, Georgia. The fraud was detected, and the applicant was removed from the United States on January 25, 2002. She is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for making a willful misrepresentation of a material fact (her previous overstay) in order to procure entry into the United States. In addition, the applicant began working soon after her arrival in the United States. She, therefore, misrepresented her intention for coming to the United States when she applied for a tourist visa. The applicant filed the instant Form I-601 on January 28, 2005. She does not dispute her inadmissibility.

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(1) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant herself is not a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's husband.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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, 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

¹ The applicant's overstay of her B-1/B-2 status by two months does not establish inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

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 that:

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).

The record reflects that the applicant's husband is a thirty-eight-year-old citizen of the United States. He has been a citizen of the United States since 2002. He and the applicant have been married since March 14, 2002.

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's continued absence from the United States would inflict extreme hardship on her husband.

The record contains three affidavits from the applicant's husband. In his first affidavit, dated February 5, 2003, he describes: his great love for the applicant; how he feels depressed and lonely without her; how she means everything to him; and how he cannot live without her.

In his second affidavit, dated August 17, 2004, the applicant's husband states the following: that the marriage is for love and not for immigration purposes; that he wishes to start a family with the applicant in the United States; that he would be devastated if the waiver application is not approved; that the trips he has been making to Peru are beginning to wear on him; that the anxiety associated with the waiver process is causing a great deal of anguish; and that he hopes the couple's separation will be short so that they may return to some normalcy.

The applicant's husband's third affidavit—undated except for the year, 2005—is identical to the August 17, 2004 affidavit.

The record also contains two affidavits from the applicant. In her first affidavit, notarized on March 18, 2003, she states the following: that she married for love and not for immigration purposes; that she loves her husband very much; that her husband has therapy three times a week for a spine injury and knee surgery follow-up; and that she wishes to attend to her husband's medical needs.²

² There was no mention of the applicant's husband's spine injury and knee surgery follow-up prior or subsequent to the applicant's March 18, 2003 affidavit; this affidavit contains the only reference in the record.

In her second affidavit, dated 2004, the applicant states the following: that she was shocked in January 2002 when immigration officials in Atlanta told her she was inadmissible to the United States;³ that her husband has a good, stable job that he cannot jeopardize through continued trips to Peru to visit the applicant; that her husband cannot give up his job to join her in Peru; that her husband has been overcome by a bout of major depression as a result of the couple's separation; and that both she and her husband have no motivation for anything as a result of the couple's separation.

The record also contains a July 26, 2005 affidavit from [REDACTED] a psychologist who interviewed the applicant's husband on July 25, 2005. [REDACTED] found that the applicant's husband and mother-in-law suffer from Major Depressive Disorder. He stated that the applicant has thought of cutting his wrists.⁴ He also found that further separation from the applicant would exacerbate his symptoms.

These affidavits do not establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's husband and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for the depression he suffers. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview with the applicant's husband, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

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 husband will face extreme hardship if the applicant is refused admission. Particularly if he remains in the United States, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Peru and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the OIC properly denied this waiver application. In adjudicating this petition, the AAO finds that the

³ It is unclear to the AAO why the applicant was shocked when she was refused entry to the United States in 2002. It is unclear why, if she was unaware of any problems, she felt compelled to fraudulently obtain a backdated entry stamp to conceal the actual date of her previous entry.

⁴ Neither the applicant nor her husband mention any thoughts of suicide by the applicant's husband in their affidavits.

record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

Finally, the AAO notes that the applicant and her husband were married on March 14, 2002, two months after the applicant was removed from the United States in January 2002. The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. The AAO therefore finds that the applicant's marriage to her husband constitutes an after-acquired equity, and is deserving of less weight than would be the case had the marriage occurred before the applicant's commission of the immigration fraud that led to her inadmissibility and removal. As noted previously, the applicant was removed from the United States in January 2002. Her husband flew to Peru and married her two months later. He was fully aware of the issues at hand in this case at the time of the marriage.

The AAO finds that the applicant failed to establish extreme hardship to his United States permanent resident spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.