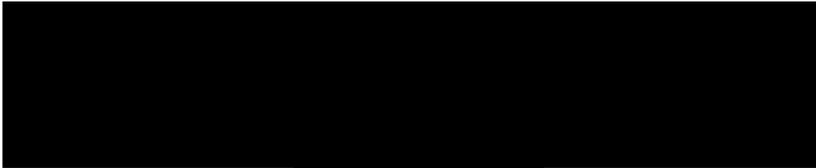




U.S. Citizenship
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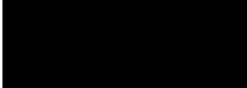
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FILE:



Office: LIMA, PERU

Date:

FEB 09 2007

IN RE:



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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Lima, Peru 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 entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized 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 her spouse.

The Acting Officer-in-Charge 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 Acting Officer-in-Charge, dated March 14, 2005.*

On appeal, the applicant contends that she did not do anything illegal and is innocent of all of the accusations made against her. *Form I-290B, submitted March 29, 2005.*

In support of these assertions, the record includes, but is not limited to, a letter from the applicant, received April 21, 2005; letters from the applicant's spouse, one received April 12, 2005 and the other dated November 24, 2004; letters from [REDACTED], dated February 2, 2005 and October 5, 2004; Letter from [REDACTED] Universidad Peruana Cayetano Heredia, Clinica Medica Cayetano Herida, dated October 28, 2004 and associated medical records; documents from the Republic of Peru, Ministry of Interior, related to the applicant's travel to and from the United States, dated August 1, 2003, February 25, 2003, April 27, 2004, and April 21, 2004; and the divorce certificate for the applicant's spouse regarding a prior marriage, dated August 23, 2003. The entire record was reviewed and considered in rendering this decision.

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 record reflects that the Acting Officer-in-Charge found that the applicant was stopped at the Atlanta Port of Entry on February 18, 2003 as she presented herself for inspection with a valid passport and B-1/B-2

nonimmigrant visa. *Decision of the Acting Officer-in-Charge, dated March 14, 2005.* According to the Acting Officer-in-Charge, U.S. immigration officials determined that the applicant had been working without authorization during previous entries into the United States and that the applicant was returning to the United States at that time to do the same. *Id.* The Acting Officer-in-Charge also stated that immigration officers found a back-dated Peruvian entry stamp in the applicant's passport to conceal her previous length of stay in the United States. *Id.* Based on this information, the Acting Officer-in-Charge found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO acknowledges the applicant's statement that she never worked in the United States, nor did she pay someone to backdate her passport (*Record of Sworn Statement*). However, it also notes that the applicant, in a statement made to a Department of State consular official on December 1, 2004, admitted that she had been denied admission to the United States because immigration officers had found out that she had been working without authorization on her previous stays in the United States. It also finds the applicant to have provided no explanation of the January 20, 2002 Peruvian admissions stay in her passport. The applicant has provided inconsistent accounts of when she departed the United States following her January 7, 2002 entry. Relevant immigration databases confirm, however, that she departed the United States for Peru on February 4, 2002, as she stated in her April 21, 2005 letter. The applicant has submitted a document from the Peruvian Ministry of the Interior to prove that the January 20, 2002 entry date found in her passport was a mistake. However, the document drafted by the Interior Ministry refers to a January 28, 2002 date rather than January 20, 2002. Accordingly, it is not proof that the January 20, 2002 date stamp is an error rather than the result of fraud. Based on the record before it, the AAO finds that the applicant has committed a willful misrepresentation of a material fact. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from 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. The plain language of the statute indicates that hardship that the applicant herself 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 spouse if the applicant is removed. 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 he resides in the Peru or the United States, as he is not required to reside outside of the United States based on the 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 her spouse will suffer extreme hardship. The applicant's spouse is from Greece. *Form G-325A for the applicant's spouse*. His father continues to live in Greece. *Form 325A for the applicant's spouse and the applicant's spouse's statement received on April 12, 2005*. The applicant's spouse has been diagnosed as having high blood pressure, diabetes mellitus, depression, and heart complications. *Letters from [REDACTED] Nassberg Diabetes Associates, P.A., dated February 2, 2005 and October 5, 2004*. While the AAO acknowledges the applicant's spouse's health conditions, it notes that his illnesses are non-life threatening and there is nothing in the record to demonstrate that the applicant's spouse would be unable to receive adequate treatment in Peru. Furthermore, a letter dated October 28, 2004 notes that the applicant's spouse was a patient of a Peruvian health clinic where he received appropriate treatment for his condition. *Letter from [REDACTED] Universidad Peruana Cayetano Heredia, Clinica Medica Cayetano Herida, dated October 28, 2004*. The record notes that the applicant's spouse was previously an electrician in the construction industry for 40 years, but that his health no longer permits him to engage in this type of work. *Letter from [REDACTED] Nassberg Diabetes Associates, P.A., dated February 2, 2005*. The AAO notes there is nothing in the record that establishes the applicant's spouse would be unable to perform a different type of work, nor does the record demonstrate that the applicant and her spouse would be unable to sustain themselves from a location other than the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse suffers from multiple medical problems and needs a constant caregiver to ensure that he comes to no harm. *Letter from [REDACTED], Nassberg Diabetes Associates, P.A., dated October 5, 2004*. The applicant helped care for her spouse and performed chores around their house when she was living in the United States. *Letter from the applicant's spouse, dated November 24, 2004*. While the AAO acknowledges these statements, it notes that the applicant's spouse has been caring for himself throughout the time that the applicant has resided overseas, and that the record fails to address whether there are any other family members or friends in the United States who could assist with the care of the applicant's spouse. The applicant's spouse stated that the applicant's help, mentally and physically, is vital to his life and their well-being. *Id.* 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, his situation, if he remains in the United States, is typical of 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 her spouse if he were to reside in 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(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.