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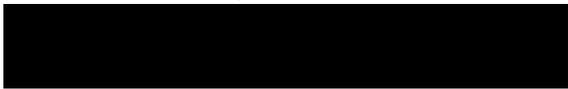
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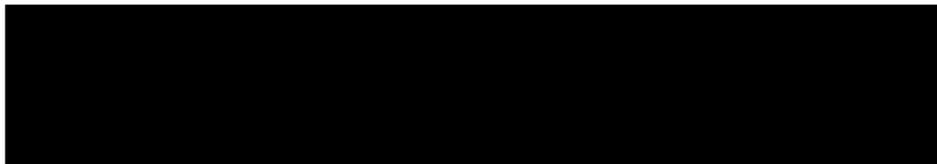
Date: MAR 16 2007

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) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 procured admission into the United States by fraud or willful misrepresentation on January 6, 2000. In addition, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant's spouse met the applicant and married him after he had been removed from the United States. She was aware of his immigration violations and the consequences of these violations when she married him, thus undermining the applicant's argument that his spouse would suffer extreme hardship because of his inadmissibility. The officer in charge also found that the hardships that could be gleaned from the applicant's spouse's statements could not be considered extreme. He states that while separation and financial concerns can cause hardship, the applicant provided no acceptable evidence that the hardships his family would endure could be defined as extreme. The application was denied accordingly. *Decision of the Officer in Charge*, dated July 26, 2005.

On appeal, counsel asserts that, "the facts and circumstances peculiar to this case that encompasses more than mere economic deprivation but a great actual and prospective injury to the U.S. citizen petitioner clearly evidence that she will undergo extreme hardship and that this case warrants a favorable discretion of the Attorney General. Refusal to do so will clearly result in financial, emotional and mental hardship to the U.S. citizen petitioner." *Counsel's Brief*, not dated.

The record indicates that the applicant entered the United States with a tourist visa on March 3, 1997. The applicant overstayed his period of authorized stay and did not depart the United States until November 18, 1998. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 18, 1998, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his November 18, 1998 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Additionally, the record indicates that on January 6, 2000 the applicant attempted to enter the United States using a B2 Tourist Visa with a fraudulent, Peruvian admission stamp showing that he last entered Peru from the United States on a date before his true entry.

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.

Section 212(i) and 212(a)(9)(B)(v) waivers of the bars to admission resulting from section 212(a)(6)(C) and section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien himself experiences due to his inadmissibility is not considered in section 212(i) or 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Peru or in the event that she resides in the United States, as she 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Peru. Counsel states in her brief that the applicant's spouse has lived her whole life in the United States, she owns a home and her three sisters live in the United States. In addition, counsel states that the applicant's spouse is in the Army Reserves as a registered nurse and because of a "stop-loss" program, she cannot leave the Reserves until the year 2014, eliminating her ability to relocate to Peru. The AAO notes that counsel submitted an article from the Army News Service, dated January 11, 2002, which states that the Army "stop-loss" program has been expanded to include the Army Reserve and National Guard. The article lists the enlisted specialties affected by the program. The only medical specialty listed is, "18D, Special Forces medical sergeant". The AAO notes that the record provides no evidence to establish that the applicant's spouse serves in the U.S. Army Reserves. Even if it were demonstrated that she is a member of the U.S. military, the applicant's spouse indicates that she holds the military rank of major, not sergeant. *Spouse's Letter*, dated February 16, 2005. Accordingly, counsel's contention that the applicant's spouse is required to honor her military commitment until 2014 under the U.S. military's "stop-loss" program is not supported by the record. On appeal, counsel also contends that the applicant's spouse has been under treatment and supervision as a result of several cysts in her right breast and suffers from arterial hypertension, hypoglycemia and hyperlipidermia. The only evidence in the record related to the health of the applicant's spouse is the medical documentation from February 2005 showing that she has multiple cystic lesions in her right breast and that she requires annual mammograms. The diagnosis also shows that there is a low suspicion of malignancy and that a biopsy should be considered. No follow-up reports were submitted. The AAO notes that the records submitted do not show the outcome of the treatment and no evidence has been submitted to establish that she would not be able to access medical care in Peru. Counsel also asserts that the applicant's spouse would not be able to find employment in Peru and would lose the benefits she has worked so hard for. The AAO notes that no documentation was submitted to show that the applicant would lose her benefits if she relocated nor was any documentation submitted to prove that she would not be able to find work as a nurse in Peru. Counsel references a Human Rights Watch overview of Peru from 2004, as well as other publications, which state that Peru's economy is facing many difficulties. However, she has failed to provide these reports for the record. Thus, the current record has not established that the applicant's spouse would suffer extreme hardship as a result of relocating to Peru.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. In counsel's brief, she states that the applicant is sad, lonely, depressed and desperate to have the applicant in the United States. The record, however, contains no medical or psychological evaluation that would establish the emotional distress of the applicant's spouse. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The only other documentation concerning the hardship the applicant's spouse would experience as a result of being separated from the applicant was in a letter from the applicant's spouse. The applicant's spouse states in this letter, dated February 16, 2005, that she loves the applicant and needs

him. The applicant did not submit any additional statements and/or documentation in regards to the hardship suffered by his spouse as a result of his inadmissibility. Thus, the record does not support a finding that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant.

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 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 he 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.