

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE:



Office: LIMA, PERU

Date:

DEC 03 2008

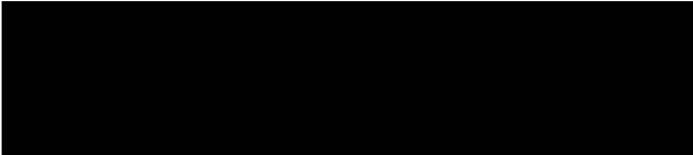
IN RE:

Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, Lima, Peru denied the Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 54-year-old native and citizen of Peru who was found 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). The record reflects that the applicant is the spouse of a lawful permanent resident. The couple has three U.S. citizen children. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his step-son on his behalf. The applicant seeks a waiver of inadmissibility in order to return to the United States and obtain lawful permanent resident status.

The officer-in-charge found that the applicant was ineligible for a waiver of inadmissibility because he failed to establish that his spouse would face extreme hardship should his application be denied.

On appeal, the applicant, through counsel, claims that his family will continue to face extreme hardship should he not be allowed to return to the United States. *See* Appeal Brief. Specifically, the applicant cites to his wife's mental health condition and the family's financial circumstances.

Evidence in the record indicates that the applicant attempted to enter the United States by fraud in 1991. The record further indicates that the applicant escaped from immigration authorities at the airport, and remained in the United States illegally until 1993. The AAO notes that the applicant does not dispute his inadmissibility. The AAO therefore finds the applicant to be inadmissible as charged under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).¹ The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien”

8 U.S.C. § 1182(i)(1). 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. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to the applicant's children also may not be considered, except as it results in hardship to the applicant's spouse.

¹ Section 212(a)(6)(C)(i) of the Act provides:

In general.—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 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 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).

The applicant’s spouse, [REDACTED] was born in Peru in 1962. She and the applicant were married in Peru in 1996. They have three children born in the United States. The applicant’s spouse was admitted to the United States as a lawful permanent resident in 2005. She and the children have been residing in New Jersey since 2005, while the applicant has remained in Peru since 1993. He seeks to return to the United States to be reunited with his family. He claims, in relevant part, that he cannot find adequate employment in Peru and therefore cannot financially support his family. In turn, he states that his family is on welfare, as his spouse is unable to provide for them on her own. The applicant states further that his wife and daughters were the victim of an armed robbery in 2006, and continue to suffer emotionally as a result of that incident. The applicant submitted a letter from a psychologist who opined that his return would be beneficial to his spouse’s long term health.

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 is denied the waiver. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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).

While the AAO has carefully considered the impact of separation from family resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record suggests that the family is experiencing hardships, emotional and financial, due to their separation, but the hardship claimed does not rise to the level of "extreme." The record does not contain any evidence of the applicant's spouse's extended family or community ties in the United States, or her employment or financial circumstances. The record does not support a finding that the applicant's spouse's hardship would be greater than the hardship experienced by other individuals in her circumstances.

The AAO notes that the record does not support a finding of extreme hardship should the applicant's family return to Peru. In this regard, the AAO notes that the applicant's spouse, as a lawful permanent resident, is not required to relocate to Peru but may remain in the United States. The AAO notes that the record does not contain evidence of the applicant's spouse's family ties in Peru. The AAO finds that any potential hardship that would result should the family relocate to Peru would be the common results of any relocation and therefore do not amount to "extreme hardship." *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.