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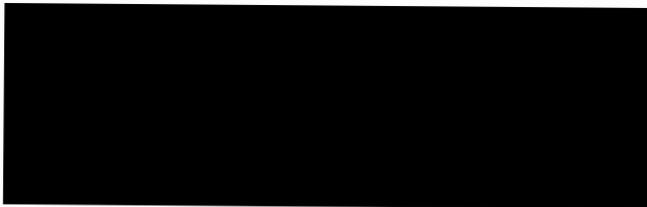
U.S. Department of Homeland Security
20 Mass, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LIMA, PERU Date: **MAY 29 2008**

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:

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.

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, Lima, Peru and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Argentina 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 sought to procure admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having accrued unlawful presence of one year or more and seeking readmission within ten years of his departure from the United States. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with his spouse.

The officer in charge concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were removed from the United States. He denied the application accordingly. *Decision of the Officer in Charge*, dated October 24, 2005.

On appeal, the applicant states that the economic and medical hardships suffered by his spouse, [REDACTED] are severe and extreme, and that there is significant evidence to prove that this is the case. He specifically points to [REDACTED]'s loss of a 16-year career and a significant compensation package should she relocate to Argentina. *Form I-290B, Notice of Appeal to the Administrative Appeals Unit*, dated May 11, 2005.

The record indicates that the applicant may be represented by new counsel. However, the AAO has found the record to contain no Form G-28, Notice of Appearance as Attorney or Representative. Accordingly, all representations will be considered but the applicant will be considered as self-represented for the purposes of this proceeding.

The applicant is the beneficiary of a K-3 petition filed by [REDACTED]. At his consular interview on June 2, 2005, the applicant indicated that he had been previously found inadmissible to the United States in November 1990 for having submitted a fraudulent employment letter in connection with an employment-based visa petition. The applicant also reported that he had been removed from the United States on June 26, 2003 for having entered the United States under the Visa Waiver Program on August 4, 2001 and failing to depart prior to the date of his removal. Accordingly, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing unlawful presence of more than one year and seeking admission to the United States within ten years of his 2003 removal.

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(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.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that waivers of the bars to admission resulting from sections 212(a)(6)(C) or 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the qualifying relative is Ms. [REDACTED], the applicant’s spouse. Hardship experienced by the applicant or other family members as a result of separation will not be considered in this section 212(i) waiver proceeding, except as it affects [REDACTED]. 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

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 record includes the following evidence in support of the applicant's claim that [REDACTED] would suffer extreme hardship if his waiver application were to be denied: statements from [REDACTED], letters from Dr. [REDACTED]'s physician, documentation of [REDACTED]'s employment, including evidence of her income and benefits, evidence regarding employment opportunities in Argentina within [REDACTED]'s firm, income tax records for [REDACTED] for the years 2000-2004, and a range of financial records for Ms. [REDACTED] for the years 1999-2005.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to Ms. [REDACTED] in the event that she relocates to Argentina. In her statements, [REDACTED] states that she has been taking care of her 80-year-old U.S. citizen mother's financial obligations and health issues since September 1999. Ms. [REDACTED] reports that she pays the mortgage on her mother's condominium and her condominium fee, her AARP supplemental insurance and half of her food bills. If she were to move to Argentina, Ms. [REDACTED] states, she could not afford to maintain the payments on her mother's condominium and her mother would also have to move to Argentina, an extreme hardship for her mother who, although born in Argentina, has lived more than 50 years in the United States. In support of these claims, [REDACTED] submits her tax records, bank statements, mortgage payments, cancelled checks and the deed to the condominium she shares with her mother to establish the financial assistance she provides her mother.

also contends that she would lose her career if she relocated to Argentina, as her continued employment is contingent on her living in the United States. She indicates that she has expended all her working life building her career with her current employer and that her employer, with a branch office in Buenos Aires, has no employment opportunities for her in Argentina. [REDACTED] predicts that given Argentina's current rate of unemployment, she probably would be unable to obtain employment outside her own organization. Were she able to find employment, whether with her current employer or with another, [REDACTED] contends that her compensation could be reduced by as much as 65 to 70 percent. She also asserts that it would be a hardship for her if she were to lose the opportunity to increase the benefits her current employment provides. As proof that her company has no comparable employment available in Argentina, [REDACTED] submits a job opening for an analyst position in her company's Buenos Aires office, a position equivalent to one she held 15 years ago, and a letter from her company's director of client financial management in Latin America indicating that the firm has no employment opportunities for her in Buenos Aires and that any opportunities that might become available would pay substantially less and not include certain benefits she now receives. [REDACTED] also submits a copy of an online website for international employment, *Escapeartist.com*, indicating that on August 5, 2003, that the website showed no jobs available in Argentina. [REDACTED] lastly asserts that she has lived in the Washington, D.C. metropolitan area all her life and that she has paid taxes all her working life.

The AAO acknowledges the range of negative financial impacts that [REDACTED] claims would result if she were she to relocate to Argentina. However, while it notes her concerns, it does not find them to establish that she would experience extreme hardship if she joined the applicant in Argentina. Although [REDACTED] contends that her relocation to Argentina would require her mother to move as well and that such a move, after 50 years in the United States, would constitute an extreme hardship for her mother, the record fails to indicate specifically what hardships would be experienced by [REDACTED]'s mother or how they would result in extreme hardship for [REDACTED], the only qualifying relative. The AAO has also considered [REDACTED] concerns about the damage to her career, loss of compensation and inability to increase her benefits with her current employer if she relocated to Argentina, as well as her reduced employment prospects in Argentina. However, difficulty in finding employment or inability to find employment in one's trade or profession, as well as a reduced level of income, are not sufficient to demonstrate extreme hardship in a Form I-601 waiver proceeding. See *Santana-Figueroa v. Immigration and Naturalization Service*, 644 F.2d 1354 (9th Cir. 1981); *Immigration ad Naturalization Service v. John Ha Wang*, 450 U.S. 139, 101 S.Ct. 1027. Moreover, the AAO notes that the record does not establish, nor does the applicant claim, that he has been unable to secure employment in Argentina and would, as a result, be unable to offset the loss of income feared by [REDACTED] upon relocation.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his waiver application is denied and [REDACTED] remains in the United States. The record contains two letters from [REDACTED] of the Mid-Atlantic Fertility Centers who states that [REDACTED] has been trying to conceive for one and one-half years and that the specific testing required to move forward with fertility treatments cannot be performed as long as the applicant remains outside the United States. [REDACTED] indicates that time is working against [REDACTED] as becoming pregnant after 40 years of age is extremely difficult even with assisted reproduction procedures. He states that the longer that [REDACTED] and the applicant are separated, the more difficult it will be for her to conceive either naturally or with fertility treatments.

██████████ indicates that she and the applicant purchased a second condominium in her mother's complex so that she could continue to provide her mother with care after their marriage. ██████████ states that she was relying on the applicant to make the mortgage and property tax payments on their newly purchased home so that she could continue paying for her mother's condominium. ██████████ also claims that being separated from her husband for two years has been the greatest hardship of all.

Although the record contains the deed to the condominium purchased by ██████████ and the applicant, the AAO notes that ██████████ has not indicated that she has experienced any financial hardship as a result of having to meet the expenses associated with the ownership of two properties. The record also contains no documentary evidence that would demonstrate how ██████████'s separation from the applicant has emotionally affected her. While the AAO acknowledges ██████████'s desire to start a family, it does not find the record to establish that the fertility treatments recommended by ██████████ could not be conducted in Argentina as well as in the United States.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that ██████████ would face extreme hardship if the applicant's waiver request were to continue to be denied. Rather, the record demonstrates that she would experience the distress and difficulties normally associated with separation from a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, and emotional and social interdependence. While separation nearly always results in considerable hardship to the individuals and families involved, the U.S. Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds, exists. The point made in this and prior AAO decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that to meet the standard in section 212(i) of the Act, the hardship suffered must be above and beyond the normal, expected hardship involved in such cases.

A review of 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.