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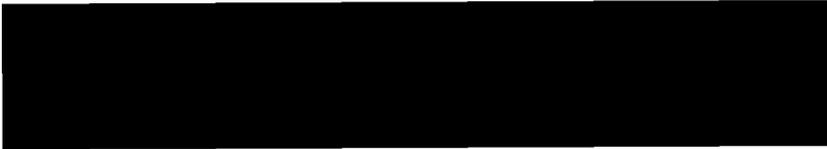
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FILE: [REDACTED] Office: BALTIMORE Date: NOV 03 2008

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:



**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 District Director, Baltimore, Maryland, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED], is a 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), for seeking admission into the United States by fraud or willful misrepresentation. Ms. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). In a decision dated May 19, 2004, the district director denied [REDACTED]'s application, indicating she failed to establish extreme hardship to a qualifying relative.

The AAO will first address the finding of inadmissibility. 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.

U.S. Citizenship and Immigration Service records reflect that the applicant is inadmissible under section 212(a)(6)(C) of the Act because she entered the United States on October 29, 1995, using a C1/D non-immigrant visa that she obtained by submitting a fraudulent job letter from Carnival Cruise Lines with her non-immigrant visa application.

The AAO will now consider whether a waiver of inadmissibility should be granted. 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.

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. Hardship to the applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. naturalized citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning” and establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994))

In the appeal brief, counsel asserts that the submitted documentation showing financial difficulty and psychological hardship to the applicant’s husband must be considered in assessing hardship. Counsel states that Ms. ██████████’s husband could not accompany her to Peru because Ms. ██████████ has no close family members there and she will not be able to find employment.

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States, and alternatively, that he joins the applicant in Peru. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

To establish extreme hardship to the applicant’s spouse, the record contains, among other documents, psychological evaluations, a letter by Dr. ██████████, real estate records, billing statements, wage statements, affidavits, employment letters, a naturalization certificate, articles about Russia, and photographs.

The AAO recapitulates the psychological evaluations by Ms. ██████████ and Ms. ██████████, the letter by ██████████, and the applicant’s affidavit and that of her husband as follows:

- ██████████’s psychological report dated July 16, 2004, states that Mr. ██████████ was born in Russia on May 17, 1973, and that Mr. ██████████’s childhood was marked by his parent’s stormy relationship, his authoritarian mother, and his absentee father. She states that the stable influences in ██████████’s life were his grandparents, who lived with Mr. ██████████’s family after his father left. Ms. ██████████ states that Mr. ██████████’s grandparents died shortly after they moved in with his family. Ms. ██████████ conveys that Mr. ██████████ resumed contact with his father two years ago and speaks to his mother occasionally. She describes Mr. ██████████’s employment in the United States, his marriage to the applicant, and their expectation of the birth of a child in January

2005. Ms. [REDACTED] describes Mr. [REDACTED] as dreading a future without his wife. She states that moving to Peru would be difficult for him: he does not know the language or any one and believes that finding employment would be difficult, and is concerned about its crime, terrorism, and health care. Ms. [REDACTED] diagnosed Mr. [REDACTED] with major depressive disorder and generalized anxiety disorder.

- Ms. [REDACTED] report dated July 16, 2004, conveys that she has seen Mr. [REDACTED] in individual psychotherapy since June 11, 2004, for anxiety and dysthymia, a low-level persistent depression. She states that Mr. [REDACTED] has a pronounced stutter, which was treated with anti-anxiety medication in Russia to relax the muscles and diminish the stutter. She states that Mr. [REDACTED] stutter is exacerbated by his concerns about his wife's immigration problems. She states that Mr. [REDACTED] has a nurturing support system with his wife, something he never attained during his growing-up years. If separated from his wife, Ms. [REDACTED] anticipates Mr. [REDACTED] becoming significantly depressed and unable to focus and perform at work.
- Mr. [REDACTED] letter indicated that he examined Mr. [REDACTED] on June 30, 2003, and placed him on the anti-depressant Zoloft, and that he gave no additional refills since then.
- The affidavit of the applicant's husband indicated that he would be devastated if his wife left the country. He states that he would have a financial hardship if she left the country because they plan to buy a house based on both their salaries. He states that he and his wife would face a language barrier making it impossible for either one of them to live in the others country of origin. He is a permanent resident, his work is in the United States, and he and his wife want to start a family here. He sought medical help for depression when he learned his wife's adjustment application was denied and was prescribed Zoloft.
- In her affidavit, the applicant conveys that her husband does not speak Spanish, she has a close relationship with him, and their separation would result in financial, emotional and psychological hardship for her husband.

In rendering this decision, the AAO has carefully considered the evidence in the record.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record shows that the applicant's spouse is very concerned about separation from his wife, who gave birth to their daughter on January 14, 2005. Given that the psychological evaluations show the applicant's husband had more than a month of individual psychotherapy with Ms. [REDACTED], and was diagnosed with anxiety and dysthymia by her; and with major depressive disorder and generalized anxiety disorder by Ms.

Austria, the AAO finds that the applicant's husband would experience extreme hardship if separated from his wife.

However, the AAO finds that Mr. [REDACTED] has submitted no documentation to establish that he would experience extreme hardship if he joined the applicant in Peru or to substantiate his concern about the social and health care conditions in Peru. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The hardship factors raised here, and considered both individually and in the aggregate, fail to establish extreme hardship to Mr. [REDACTED] if he were to join his wife in Peru.

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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.