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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2



FILE:



Office: LIMA, PERU

Date: APR 01 2009

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The applicant, [REDACTED], 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 seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to live in the United States with his 62-year-old father, a naturalized citizen of the United States, and his 60-year-old mother a lawful permanent resident of the United States. The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated October 13, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (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 chapter is inadmissible.

The record reflects that in seeking to procure an E-3 visa, the applicant, in December 1999, submitted fraudulent employment references to an official of the U.S. Embassy. In light of his material misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel states, in part, that the applicant's father and mother would experience extreme emotional and financial hardship if the waiver application were denied. He states that the applicant's sister had lived with their parents, financially assisting them and becoming an integral part of their lives, until she joined a monastery, the Carmelite order, which requires its members to be separated and secluded from the outside world. He states that the applicant's parents are separated from their daughter and now will be separated from the applicant if the waiver application were denied. The applicant would be able to financially assist his parents, counsel states, if the application were approved. He states that the applicant's father has Barrett Esophagus and anxiety and insomnia due to emotional and financial stress. Counsel states that the applicant's parents would not move to Peru because this would separate them from their other son, who lives in the United States, and would prevent them from having access to the same level of medical care they receive in the United States. Counsel states that Peru has limited employment opportunities and widespread corruption, as shown in the U.S. Department of State Country Report for 2006.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's father, a naturalized citizen of the United States, and mother, a lawful permanent resident of the United States. 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"; 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 support of the waiver application, the record contains, in addition to other documents: affidavits, a letter by the prioress [REDACTED] information about the monastery, a letter by [REDACTED] a wage statement, a Navy Federal Credit Union mortgage statement in the name of the applicant's sister and father and with the amount of

\$1,182, a letter by [REDACTED] of Smile for Life Behavioral Health, photographs, and a report on human rights in Peru by the U.S. Department of State.

Extreme hardship to the applicant's father or mother must be established in the event that he or she joins the applicant to live in Peru, and alternatively, if he or she remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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

The applicant's father earns \$11.89 per hour, grossing \$594 each work, working in a hotel's laundry department; his mother is unemployed and has health problems. *Affidavit by the Applicant's Brother; Wage Statement*. The applicant's sister lived with her parents since 1998, helping them around the house and with mortgage payments, bills and food. *Id.* The applicant's sister became a nun in November 2006, which requires living a cloistered life. *Letter by the prioress [REDACTED]*

[REDACTED] Her decision to become a nun impacted the applicant's parents, causing emotional and financial stress. *Affidavit by the Applicant's Brother; Letter by [REDACTED] dated November 1, 2006*. The applicant's brother indicates that he helps his parents financially, but it is taking a toll on him because he has his own family to support. *Affidavit by the Applicant's Brother*. The applicant's father and brother indicate that if the waiver application were approved, the applicant would provide financial and emotional support for his parents. *Affidavit by the Applicant's Brother; Affidavit by the Applicant's Father, dated March 30, 2006*. The applicant's father states he had plans to set up a business with the applicant. *Id.*

The applicant's mother has hypertriglycemia. *Letter by [REDACTED]* His father was diagnosed with Barrett's Esophagus, which his father's physician indicates is a pre-cancerous condition that is very serious if not treated and followed up very closely. He was prescribed Prevacid and Trazodone for his nerves. *Letter by [REDACTED] dated December 21, 2006*. The applicant's father was diagnosed by [REDACTED] with Major Depressive Disorder, Recurrent. [REDACTED] states that the applicant's father feels financially strapped paying his house's mortgage without his daughter's financial contribution. *Letter by [REDACTED] dated January 8, 2007*. The applicant's father is recommended to continue with treatment, which began on December 16, 2006, and take medication regularly. *Id.*

The record conveys that, before she joined a monastery, the applicant's sister lived with her parents, financially assisting in paying their \$1,182 mortgage. The applicant's brother asserts that it is difficult for him to help his parents financially because he has his own family to support. In light of the changed financial circumstances, the AAO finds that the applicant's parents would experience extreme hardship if they were to remain in the United States without him.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Less than 25 percent of the workforce in Peru makes up the formal sector, which is the only sector where the minimum wage of \$153 per month is enforced by the Ministry of Labor. *U.S. Department of State's Human Rights Report on Peru, dated March 6, 2007*. "The [minimum] wage did not provide a decent standard of living for many families," according to the report on human rights in Peru. *Id.*

In light of the applicant's father's diagnosis of Barrett's Esophagus, a serious condition for which he receives close monitoring, and bearing in mind the age of his parents, his father's employment in a low skill job and his limited ability to obtain employment in Peru, given its employment and living conditions as described in the U.S. Department of State report, AAO finds that these hardships cumulatively rise to the level of extreme hardship if they were to join their son to live in Peru.

Extreme hardship has been established to a qualifying relative in the event the qualifying relative were to join the applicant to live in Peru, and alternatively, if the qualifying relative were to remain in the United States without the applicant. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has been established.

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's parents, his steady employment, and the passage of over nine years since the applicant's immigration violation. The unfavorable factor in this matter is the applicant's attempt to obtain a visa through fraud. The AAO notes that the applicant does not appear to have a criminal record.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's breach of the immigration laws of the United States, the severity of the applicant's misrepresentation is at least partially diminished by the fact that nine years have elapsed since the applicant's immigration violation. The AAO finds that the hardship imposed on the applicant's parents as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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 met that burden. Accordingly, the appeal will be sustained. The application will be approved.

ORDER: The appeal is sustained. The application is approved.