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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:

Office: LIMA, PERU

Date: APR 14 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.

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), Lima, Peru, and 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 native and citizen of Peru who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by willfully misrepresenting a material fact. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen spouse and children.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 21, 2006.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's Form I-601 has adversely affected the applicant's husband and children. *Form I-290B*, filed March 8, 2007. The AAO notes that counsel has not disputed that the applicant willfully misrepresented material facts when she attempted to enter the United States on December 1, 1998 or that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record includes, but is not limited to, counsel's letter, a letter from the applicant, a statement from the applicant's husband, and the applicant's sworn statement. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on December 1, 1998, the applicant attempted to enter the United States, and during secondary inspection, an immigration officer determined that the applicant misrepresented her entries and departures to and from the United States. On the same day, the applicant was expeditiously removed from the United States. On May 31, 2005, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On September 8, 2005, the applicant's Form I-130 was approved. On or about July 17, 2006, the applicant filed a Form I-601. On February 21, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The AAO notes that when the applicant was taken to secondary inspection on December 1, 1998, she stated she was returning to the United States to visit her son. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated December 1, 1998. The applicant claimed that her last entry into the United States was on May 21, 1998, and she departed the United States on June 6, 1998 and had not reentered since that date. *Id.* However, the immigration officer discovered several receipts in the applicant's belongings that were signed by the applicant after June 20, 1998. Additionally, the AAO notes that based on the applicant's Peruvian migration record, the applicant left Peru for the United States on May 20, 1998, and returned from the United States on October 2, 1998. Based on the inconsistencies in the applicant's sworn statement and evidence in the record, the AAO finds that the applicant willfully misrepresented a material fact when attempting to enter the United States.

The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that

might well have resulted in a proper determination that she be excluded. 9 FAM 40.63 N61; see also *Matter of S- and B-C-*, supra. The AAO finds that the applicant's misrepresentation regarding her actual physical presence in the United States is a material misrepresentation and she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's husband "is currently suffering a hardship because [the applicant] has not [been] able to be with him and with their children for the past years." Counsel's letter, dated March 3, 2007. The applicant states her "husband is undergoing such a depression." Letter from [REDACTED] undated. The AAO notes that other than the applicant's statement regarding her husband's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. The applicant's husband states he works full-time to take care of the children and the applicant in Peru. See statement from [REDACTED], dated July 25, 2006. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Peru. Additionally, the AAO notes that the applicant's husband is a native of Peru, he speaks Spanish, and it has not been established that he has no family ties in Peru. The applicant's husband states the children are suffering hardship by being separated from the applicant. *Id.* The AAO notes that, as noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Peru.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. Counsel states that the applicant's husband has been

working in the United States for more than 20 years and he cannot find a similar job in Peru. *Counsel's letter, supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that beyond generalized assertions regarding country conditions in Peru, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's husband has endured hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.