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U.S. Department of Homeland Security
20 Massachusetts Avenue N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: NEWARK, NEW JERSEY

Date: **MAR 06 2009**

IN RE: Applicant: [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:
[REDACTED]

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 District Director, Newark, New Jersey, 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 entering the United States by presenting a photo-altered passport and visa. The record indicates that the applicant is married to a lawful permanent resident of the United States and 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 lawful permanent resident spouse.

The District Director 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. *District Director's Decision*, dated July 29, 2004.

On appeal, the applicant, through counsel, asserts that the applicant established extreme hardship to her qualifying relatives and that she "did not intentionally misrepresent facts on her application." *Form I-290B*, filed August 26, 2004. Counsel states that "it was [the applicant's] understanding at the time that she had never been ordered removed by an Immigration Judge as she was unaware that an Immigration Judge had ordered her excluded in absentia on March 29, 1995." *Id.* The AAO notes that the applicant may have been unaware of the *in absentia* deportation order against her, and therefore, she did not knowingly misrepresent herself on her adjustment application; however, the AAO finds that the applicant did misrepresent herself when she initially entered the United States and is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) for that misrepresentation.

The record includes, but is not limited to, the applicant's appeal and a psychological evaluation on the applicant's spouse. 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.
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- (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...

In the present application, the record indicates that on January 28, 1995, the applicant entered the United States by presenting a photo-altered passport and visa. On March 30, 1995, an immigration judge ordered the applicant excluded and deported *in absentia*. On February 10, 1998, the applicant's lawful permanent resident husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On June 11, 1998, the applicant's Form I-130 was approved. On August 19, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 29, 2004, the applicant filed a Form I-601. On July 29, 2004, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

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 will suffer extreme hardship if the applicant is removed to Peru. *Form I-290B, supra*. [REDACTED] diagnosed the applicant's husband with generalized anxiety disorder and major depression. *See psychological evaluation by [REDACTED]*, dated August 19, 2004.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on one interview between the applicant's husband and psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's husband. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the assessment's value to a determination of extreme hardship. Counsel states that the applicant's husband "is a native of Uruguay and would be thrust into a country which is unfamiliar to him and...[the applicant's husband] would be forced to begin all over and seek new employment." *Form I-290B, supra*. 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 speaks Spanish. 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 business and in close proximity to his family. The applicant's husband states "it would be absolutely impossible for him to abandon his children and granddaughter, the business that he has strived arduously to build and maintain since 1974, his friends, his home, and his life here." *Psychological evaluation by [REDACTED]* *supra* at 2. As a lawful permanent resident of the United States, 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. Counsel claims that the applicant's husband "has built his own landscaping business...and which is successful due to his hard work and his cultivation of a loyal customer base. The lack of productive earnings would pose a financial hardship to this family and impact their quality of life." *Form I-290B, supra*. 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 will endure 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.