

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



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

**PUBLIC COPY**

H2



FILE:



Office: ATLANTA

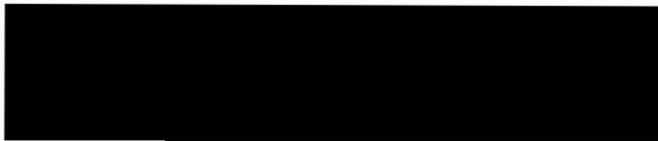
Date: **MAR 19 2009**

IN RE:



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 PETITIONER:



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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Atlanta, Georgia, and the matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant 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 having procured a visa and admission to the United States through fraud or misrepresentation. The applicant is married to a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen sister. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated October 17, 2005.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) failed to adequately weigh all the relevant factors when determining that the applicant's husband would not suffer extreme hardship if the applicant is denied a waiver of inadmissibility. Specifically, counsel states that the applicant's husband would suffer emotional and financial hardship if the applicant is removed from the United States. *Brief in Support of Appeal* at 7. Counsel asserts that the applicant's husband would suffer emotional hardship if he remained in the United States without the applicant and would also suffer hardship if he relocated to Peru because he would not be able to find employment there and support the family. *Brief* at 7-9. Counsel additionally asserts that the applicant's husband would suffer hardship in Peru because he has resided in the United States since he was 21 years old and has established strong ties here. *Brief* at 10. Counsel further claims that the applicant's husband would suffer emotional hardship as a result of hardship his daughter would experience whether she remained in the United States and were separated from the applicant or had to relocate to Peru. *Brief* at 11. Counsel asserts that these factors, when considered in the aggregate, would amount to extreme hardship to the applicant's husband if she were denied admission to the United States. In support of the waiver application and appeal, counsel submitted affidavits from the applicant and her husband, naturalization certificates and permanent resident cards for the applicant's siblings, letters from the applicant's employers, documentation related to property taxes and the mortgage for the home owned by the applicant and her husband, documentation related to automobile loans for the cars owned by the applicant and her husband, school records for the applicant's daughter, credit card statements and other bills, photographs of the family, income tax returns, a psychological evaluation for the applicant's husband, and information on conditions in Peru. 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:

- (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:

- (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.

The AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

A section 212(i) waiver of the bar to admission resulting from a 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 the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-eight year-old native and citizen of Peru who has resided in the United States since March 11, 1993. She was admitted after presenting a passport and visa she obtained after falsely stating that she was married and submitting a false marriage certificate with her nonimmigrant visa application to the U.S. consulate in Lima, Peru. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having obtained a visa and procured admission to the United States through willful misrepresentation of a material fact. She married her husband on December 20, 1995 and they have one U.S. citizen daughter together. The record further reflects that the applicant's husband is a forty-two year-old native and citizen of Peru and lawful permanent resident of the United States. The applicant resides in Charlotte, North Carolina with her husband and daughter.

Counsel asserts that the applicant's husband would suffer extreme hardship if he were to relocate to Peru with the applicant due to the length of time he has resided in the United States, his family ties in the United States, and conditions in Peru. *Brief* at 7-8. Counsel states that the applicant's husband has family in Peru, but they are poor and could only help him "on a very limited basis." *Brief* at 8. Counsel further states that the applicant has two siblings in the United States who are close to the applicant and her family, and the applicant and her husband "can depend on them when necessary." *Brief* at 8. Counsel claims that due to economic conditions and high unemployment rates in Peru and the length of time he has resided outside of Peru, the applicant's husband would be unable to find employment comparable to the steady employment he has in the United States and would be unable to support his family. *Brief* at 9-10. In support of these assertions, the record includes a report from the U.S. State Department submitted with the waiver application that states that the poverty rate in Peru was 54% and unemployment and underemployment rates amounted to a total of 56%. *See U.S. Department of State, Country Reports on Human Rights Practices 2004 – Peru*, released February 28, 2005. Counsel further states that the applicant has resided in the United States for nearly half of his life and has extensive family, social, and property ties here, while he has only his parents and siblings in Peru, but no other ties. *Brief* at 10.

The AAO notes that the applicant's husband lived in Peru until he was twenty-one years old and his family still resides there. Further, although counsel asserts that economic hardship may be sufficient to establish extreme hardship where there is a complete inability to find work, the evidence on the record is insufficient to establish that the applicant's husband would be completely unable to find work in Peru. The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Although the applicant's husband would likely experience a decline in standard of living if he were to relocate to Peru due to the loss of his property in the United States and poor economic conditions there, the record does not establish that he would suffer economic

hardship beyond the common results of deportation. Further, although separation from family members and community ties in the United States might cause the applicant's husband some hardship, there is no evidence on the record to establish that the effects of this separation would be more severe than that normally experienced as a result of removal. The emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Matter of Pilch, supra.*

Counsel asserts that the applicant's husband would suffer emotional and financial hardship if he remained in the United States without the applicant and that their marriage "for all practical reasons would be destroyed since they would be thousands of miles apart in different countries." *Brief* at 7. Counsel further states that the applicant's husband would suffer extreme hardship due to separation from the applicant and refers to *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), to support the assertion that separation from family may be the single most important hardship factor. In support of these assertions counsel submitted a psychological evaluation of the applicant's husband and states that according to the evaluation, he would suffer extensive hardships and significant psychological distress if the applicant were removed from the United States. *Brief* at 7-8. The evaluation states that the applicant's removal would disrupt the family, cause psychological harm to family members, and would traumatize their daughter. *Evaluation from [REDACTED] Consultant Psychologist*, dated May 3, 2005. It further states, "[REDACTED] is a traditional husband with his entire life built around family unity and is ill prepared to be the sole economic, emotional and psychological provider for his daughter." *Id.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any diagnosis of or history of treatment for any psychological condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband states in his affidavit that he works two jobs and works sixty hours a week, and that the applicant also works and "helps greatly with the bills." *Affidavit of [REDACTED]* dated November 14, 2005. Counsel states that the applicant's husband provides for the family by working two jobs and the applicant, who works and earns about \$320 per week, helps support the family.

*Brief* at 9. Income tax returns and W-2 Forms submitted with the appeal indicate that the applicant's husband earned significantly more than the applicant. Although it appears that the loss of the applicant's income would have a negative impact on the financial situation of her husband, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. The financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

It appears from the record that any emotional or financial hardship to the applicant's husband would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.