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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: ATLANTA

Date: **NOV 06 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 District Director, Atlanta, Georgia, denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a citizen of Peru who was born in Argentina. He is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130 petition she filed on his behalf. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. On appeal counsel contended that the evidence shows that the removal of the applicant would cause extreme hardship to his wife. Counsel submitted a brief in support of his position. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

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.

The applicant signed a Form I-589 asylum application on November 5, 1996. In it, he claimed that his father was assassinated in Peru because the applicant's father and the applicant's mother were engaged in social work of which Sendero Luminoso (The Shining Path) did not approve. The applicant stated that Sendero Luminoso or another group, Tupac Amaro, would have him killed if he returned to Peru to live.

The applicant admitted, in an attachment to a letter from counsel dated March 4, 2004, that in an EOIR 40, Application for Suspension of Deportation, that he filed on June 27, 1997 he incorrectly answered one of the questions at Item 63; specifically, he stated that he had never given false testimony for the purpose of obtaining immigration benefits when, in fact, he had.

The applicant admitted, in a letter dated August 4, 2005, that he misstated facts on his asylum application. He also stated that, on the Form I-485, which he signed on June 15, 2005, he recorded an incorrect answer at Part 3, Question 10, in that he stated that he had never sought to procure a visa, etc., by misrepresenting a material fact.

Interviewer notations in red ink on the application's Form I-485 indicate that the applicant admitted, at his March 16, 2006 interview, that he had made false statements on a prior application.

On June 12, 2009 the AAO issued a request for evidence in this matter, asking the applicant to explain precisely what misstatements he made in his asylum claim and what the truth of those matters is, and to explain the misstatements to which he referred in his other admissions.

Counsel submitted a response dated September 10, 2009. In it, he stated that the applicant now admits that, although his father died of natural causes, he falsely stated on his asylum application that his father had been assassinated by Sendero Luminoso guerrillas. Further, in his asylum claim, he stated that a bomb was placed and exploded outside his house, when no such bomb was ever placed.

The AAO finds that the applicant knowingly misrepresented material facts in applying for an immigration benefit as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself or any children he might have is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record contains letters, from various acquaintances of the applicant, which are essentially character references. They contain nothing directly relevant to whether failure to approve the waiver application would result in hardship to the applicant's wife, and they will not be further addressed.

The record contains a letter, dated April 5, 2004, from someone who had then known the applicant for seven years and his wife for four years and who states that the applicant's departure would be detrimental to his marriage. The record contains a letter, dated July 26, 1997, which states that the writer has been acquainted with the applicant for almost four years and that the applicant is the main provider for the applicant's family. The record contains a letter, notarized July 29, 1997, from another acquaintance who had then known the applicant for six years, who stated, "He remains a key contributor to the family finances." The record contains an undated letter from the applicant's brother-in-law who stated that while the applicant was attending school he never stopped supporting his mother, his sister, and his then girlfriend, who is now his wife. Those letters contain no other statements relevant to whether failure to approve the waiver application in this case will result in extreme hardship to the applicant's wife.

A letter, dated May 16, 2004, from the applicant's mother-in-law states that she hopes to live near her daughter's family when she and her husband retire, and that if the applicant relocates outside of the United States, she would be unable to do so. It also states, "Nor [the applicant] neither [the applicant's wife] [sic] will be able to find a job in Peru to afford what they get in the [United States]."

A letter, dated March 15, 2006, from the applicant's wife speaks at length about conditions in Columbia, South America, and stated that she does not believe she should be asked to move there. The AAO notes that the applicant's home country is Peru, and the applicant's wife did not explain the relevance of conditions in Columbia, the country of her own birth.

The applicant's wife further stated that in the United States she and her husband have a house, cars, friends, retirement savings, and the best health insurance available to them, and that she would not be in the same financial position elsewhere. She further stated that she and the applicant want to have children soon, and that she would worry about their future in Columbia.

The record contains a Psychological Evaluation produced on March 14, 2007 by [REDACTED] a licensed psychologist in Duluth, Georgia. That evaluation states that, pursuant to a referral by her attorney, [REDACTED] examined the applicant's wife on March 10, 2007. [REDACTED] stated that no patient/treating relationship was established.

[REDACTED] stated that the applicant's wife reported that she feels distressed when she considers the possibility that the applicant might be removed from the United States. The applicant's wife reported that she feels anxious, depressed, tense, sad, irritable, worried, fearful, tense, and unable to sleep. She stated that to be separated from her husband or obliged to depart the United States in order to be with him would be devastating.

[REDACTED] concluded that the impending removal of the applicant is causing the applicant's wife "significant emotional distress." He further stated, "[The applicant and his wife] have developed a very strong emotional bond, sense of personal security, and family stability . . ." and that "Extreme unusual psychological injury, emotional and financial hardship would arise in [them] if [the applicant] is deported."

Initially, the AAO notes that the evaluation contains no indication, other than [REDACTED] conclusion, that he discussed financial matters with the applicant's wife. The basis for his conclusion pertinent to financial hardship is unstated and unknown to the AAO.

Further, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single self-reporting interview between the applicant's wife and the psychologist. The record fails to reflect an ongoing professional relationship with the applicant's wife or any history of treatment for any disorder, and, in fact, the psychologist disclaimed any such relationship or treatment. The conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. The single meeting between the applicant's wife and the psychologist appears to have been arranged by the applicant's attorney for the specific purpose of producing an evaluation to be used in this proceeding. For all of these reasons, the AAO finds [REDACTED] conclusions to be speculative, and finds the evaluation of very limited value in determining extreme hardship.

The record contains evidence showing that, prior to his marriage on April 6, 2001, the applicant had total income of \$8,640, \$6,699, \$12,465, \$1,667, \$2,064, and \$21,657 during 1994, 1995, 1996, 1998, 1999, and 2000, respectively. A copy of the applicant's Social Security Statement indicates that during 1997 the applicant had Taxed Social Security Earnings of \$2,133.

The record contains a 2002 IRS printout showing that during that year the applicant and his wife had total income of \$45,153. The record also contains 2002 Form W-2 Wage and Tax Statements showing that the applicant's wife earned \$3,570 from one employer and \$782.27 from another during that year. The record does not show that those were her only employers during that year. The record contains no evidence pertinent to any amount the applicant earned during that year.

The record contains a 2003 IRS printout showing that during that year the applicant and his wife had total income of \$69,292. The record also contains 2003 W-2 forms showing that the applicant's wife earned wages of \$31,675 from one employer during that year. The record does not show whether that was her only employer during that year. The record contains no evidence pertinent to any amount the applicant earned during that year.

The record contains a copy of a Form 1040 U.S. Individual Income Tax Return that shows that the applicant and his wife earned total income of \$102,352 during that year. A 2004 W-2 form shows that one employer paid the applicant's wife \$36,322.16 during that year. The record does not show whether that was her only employer during that year. The record contains no evidence pertinent to any amount the applicant earned during that year.

A pay statement shows that the applicant received gross pay of \$2,653.85 for the two-week pay period from April 11, 2004 to April 24, 2004. The pay statement shows year-to-date gross income of \$19,903.88. A mortgage statement shows that the applicant has a monthly mortgage statement of \$436.78. The record contains statements pertinent to some of other expenses of the applicant and the applicant's wife.

In a brief submitted on appeal, counsel argued that the evidence submitted shows that the applicant's wife would suffer extreme hardship if the waiver application were not approved.

Demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The inability to maintain one's present standard of living does not necessarily constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996). The statements by the applicant's wife and her mother that the applicant's family's standard of living will decrease if the waiver application is not approved do not resolve the financial hardship issue. The evidence in the record includes some evidence pertinent to the applicant's income, but does not demonstrate what the applicant's annual income typically is or has been recently. It does not indicate what his wife's annual income has been, or include an exhaustive list of the applicant's wife's recurring expenses. With no such evidence, the AAO is unable to compare the applicant's wife's income to her expenses and is unable, therefore, to determine whether, if the waiver application were denied, and the applicant's wife remained in the United States, the applicant's wife would suffer financial hardship which, when considered together with the other hardship factors in the record, would rise to the level of extreme hardship.

The applicant's wife stated that she and the applicant have good medical insurance coverage in the United States, apparently implying that such coverage would be unavailable in Peru, although she did not provide any evidence in support of that implication. The applicant's wife did not claim that any other medical hardship would result from denial of the waiver application. The evidence does not demonstrate that, if the waiver application were denied, the applicant's wife would suffer medical hardship which, when considered together with the other hardship factors in the record, would rise to the level of extreme hardship.

Another hardship factor in this case is the emotional hardship to the applicant's wife if she is separated from her husband. The record demonstrates that the applicant has loving and devoted family members who are concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The evidence submitted does not demonstrate that, if the applicant were removed from the United States and his wife remains, his wife would suffer emotional hardship which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

Further, the applicant's wife provided little evidence and no argument to show that she would suffer hardship if she moved to Peru with the applicant. The applicant's wife's mother noted that, if the applicant's wife moved from the United States to be with him, the applicant's wife would be separated from her parents. Moving such a distance from one's parents constitutes some degree of hardship but, as above, is a hardship typical of removal, and not a hardship which, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.