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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LIMA, PERU

Date: SEP 02 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Lima, Peru, and is now before the Administrative Appeals Office (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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation, and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his last departure. The applicant is married to a U.S. citizen child, has three U.S. citizen children and two U.S. citizen stepchildren, and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, at 5, dated January 17, 2007.

On appeal, prior counsel asserts that the officer-in-charge erred and abused his discretion in denying the waiver application, did not correctly balance the hardships in the applicant's favor and did not apply the correct legal standard. *Form I-290B*, dated February 16, 2007.¹

The record includes, but is not limited to, prior counsel's brief, the applicant's spouse's statements, a letter from an elementary school assistant principal, a letter from the applicant's children's doctor and an employer letter for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant withheld the fact that he intended to remain in the United States and not transit to Japan when he obtained his C-1 transit visa and admission to the United States in C-1 status in August 1991. Based on these misrepresentations, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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

- (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 that:

¹ The AAO notes the September 15, 2008 Motion to Withdraw as Counsel filed by

and has granted

- (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.

Furthermore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until July 3, 2006, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his July 3, 2006 departure.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver and a section 212(i) waiver of the relevant bars to admission are dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship experienced by the applicant or his children is relevant only to the extent it causes hardship to a qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established whether she relocates to Peru or remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Peru. The applicant's spouse states that Peru does not have enough jobs to go around, the applicant has become unaccustomed to the Peruvian way of life, and it has been difficult for him to adapt to the Peruvian labor market. *Applicant's Spouse's Second Statement*, at 2, dated March 20, 2007. The AAO notes that the record lacks documentary evidence of emotional, financial, medical, or any other type of hardship that the applicant's spouse would encounter in Peru. The record also does not include evidence of hardship to the applicant's children if they relocated to Peru and how this hardship would affect the applicant's spouse. There are no claims of hardship related to whether the father of two of the applicant's spouse's children would object to relocation of his children. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the record, the AAO finds that insufficient evidence has been provided to establish extreme hardship to the applicant's spouse in the event of relocation to Peru.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the applicant's spouse remains in the United States. Prior counsel states that the applicant's family is accustomed and entitled to receive his economic, psychological and emotional support; he has worked for many years to support his family; he has proved to be an exemplary father to all of his children and stepchildren; his entire family would be crippled by his loss; and the emotional and the psychological well-being of his family will be affected permanently. *Brief in Support of Appeal*, at 2, 4, dated March 17, 2007. The applicant's spouse states that the applicant has taken full responsibility for supporting all of her children, she has never received child support from the father of her two sons, her home is well maintained, she and the applicant have achieved their dreams and overcome personal and economic problems that often affect children, she personally has overcome serious psychological problems caused by her relationship with her former husband, she is no longer

able to guide or maintain her home, and the applicant shows affection to all of the children without differentiating between them. *Applicant's Spouse's Second Statement*, at 1-2. The applicant's spouse states that it is difficult for her to work because of the age of the children. *Applicant's Spouse's First Statement*, undated. The record reflects that the applicant was an involved parent at a local elementary school. *Letter from Assistant Principal, Zela Davis Elementary School*, dated February 9, 2007. The record reflects that the applicant is the guarantor for the health insurance of his children. *Letter from [REDACTED]*, dated February 7, 2007. The AAO notes that the record lacks sufficient documentary evidence of emotional, financial, medical, or any other type of hardship that the applicant's spouse would encounter without the applicant. Based on the record, the AAO finds that insufficient evidence has been provided to establish extreme hardship to the applicant's spouse in the event that she remains in the United States without the applicant.

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 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he 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. *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.