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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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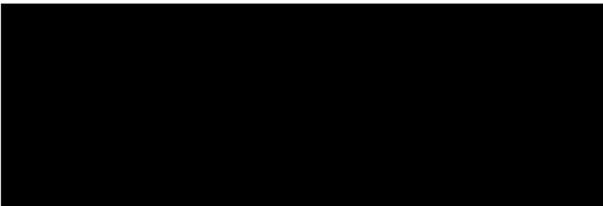
FILE: [Redacted] Office: LIMA Date:

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Peru, presented a fraudulent passport when attempting to procure entry to the United States in May 2003. The applicant was thus 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 attempted to procure entry to the United States by fraud and/or willful misrepresentation.¹ 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 U.S. citizen spouse and child, born in 2009.

The acting field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated April 28, 2009.

In support of the appeal, counsel submits a brief, dated June 18, 2009, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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 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 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 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....

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident

¹ The applicant does not contest the acting field office director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative and hardship to the applicant, their child and/or the applicant's spouse's parents cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 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.

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).

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration, the applicant's spouse contends that he is experiencing emotional hardship due to long-term separation from his spouse due to her inadmissibility. In addition, he asserts that due to his lengthy visits to Peru to visit his spouse and child and the emotional hardships of being separated from his family, he fears that he will lose his job. *Affidavit of* [REDACTED] dated January 8, 2007. On appeal, in support of the emotional hardship referenced, counsel has provided a letter from [REDACTED], who notes that the applicant's spouse is suffering due to long-term separation from his spouse and child. *Psychological Report from Clinical Psychologist*, dated June 1, 2009.

It has not been established that the applicant's spouse is experiencing extreme emotional hardship due to long-term separation from his spouse. As [REDACTED] states in the referenced report, psychological testing of the applicant's spouse does not reflect a major emotional disturbance. Although [REDACTED] does confirm that the applicant's spouse is anxious and depressed, the AAO notes that [REDACTED] diagnosis is based on a single visit in 2009, more than two years after his initial evaluation in January 2007, when [REDACTED] diagnosed the applicant's spouse with significant emotional distress but confirmed that the applicant's spouse was functioning in a "very positive manner vocationally and personally and...has been doing quite well..." *Letter from* [REDACTED]

██████████ dated January 9, 2007. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or a specific treatment plan for the anxiety and depression referenced in ██████████ report from June 2009, to support the gravity of the situation. Moreover, the conclusions reached by ██████████ do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

In addition, no documentation has been provided establishing that the applicant's spouse's employment is suffering due to his state of mind and his frequent travels to Peru to visit his spouse and/or that the associated costs of traveling to Peru regularly are causing the applicant's spouse financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Moreover, no documentation has been provided from the applicant's spouse's treating physician outlining the specific hardships the applicant's spouse would face, having been diagnosed with Crohn's disease, were his spouse unable to reside in the United States. The letter provided by the applicant's spouse's treating physician merely outlines the hardships he would face were he to relocate to Peru. As such, it has not been established that the applicant's U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse contends that he will suffer extreme hardship were he to accompany the applicant to Peru, due to unfamiliarity with the language, culture and customs of the country. In addition, he asserts that he would suffer financial hardship, as he would be unable to find gainful employment in his field due to a lack of a bachelor's degree. Finally, the applicant's spouse notes that he suffers from Crohn's Disease and arthritis associated with the disease, and a relocation abroad would mean medical hardship for him, as he would no longer be treated by physicians familiar with his medical condition, he would not have adequate health insurance coverage to cover the exorbitant costs of his medical treatment, and the medicines he needs to survive are unavailable in Peru.² *Statement from* ██████████, dated June 4, 2009.

The AAO has determined that extreme hardship would exist were the applicant's U.S. citizen spouse to accompany the applicant to Peru. The applicant's spouse was born and raised in the United States,

² The applicant's spouse notes that during one trip to Peru, when he remained longer than he had planned, he ran out of the medication he takes for his condition-Humira. He and the applicant called many pharmacies and went to every hospital in Lima, Peru, trying to find the medicine. The medication was unavailable in Peru. He concludes that without that medicine, he would be "severely disabled, and maybe I would die...." *Id.* at 1.

has no ties to Peru, is gainfully employed in the United States, and does not speak the language. In addition, he would suffer medical hardship in Peru due the unavailability of the medications he needs, the lack of health insurance coverage, and the inability to continue to see the physicians who are familiar with his condition. Given these factors, the applicant's spouse would experience extreme hardship if he were to accompany the applicant to Peru.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen spouse would experience extreme hardship were he to relocate abroad due to the applicant's inadmissibility, the applicant has failed to establish that her spouse would suffer extreme hardship if he were to remain in the United States while the applicant relocated abroad. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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(a)(9)(B)(v) 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. The waiver application is denied.