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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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[redacted]

AUG 0 6 2010

FILE: [redacted] Office: LIMA, PERU Date:

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Lima, Peru. The matter 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 entered the United States twice using fraudulent documents. She 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 admission to the United States through fraud or misrepresentation. The applicant also is inadmissible 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.[1] The applicant is the beneficiary of an approved Petition for Alien Fiancé (Form I-129F) based on her engagement to a United States citizen. 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 fiancé.

The Officer-in-Charge concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying fiancé and denied the application accordingly. *See Decision of the Officer-in-Charge* dated March 3, 2008.

On appeal, the qualifying fiancé provided a letter in which he asserts that he is encountering emotional hardships, such as stress and depression, as a result of the separation from his fiancé. In addition, he apologized for his fiancé for not being "straight forward with [the] department."

The record contains the following evidence; letters written by the qualifying fiancé and the applicant, the naturalization certificate of the qualifying fiancé, the passport and birth certificate of the applicant and qualifying fiancé's child and the qualifying fiancé's prescription for an antidepressant. The entire record was reviewed and considered in rendering a decision on the appeal.

USCIS records reflect that the applicant attempted to enter the United States on June 16, 2000 using a fraudulent visa and was processed for expedited removal. The applicant subsequently reentered the United States without inspection. Although the Officer-in-Charge's decision, dated March 3, 2008, does not indicate that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant's letter, received on May 27, 2008, indicates that she "lived in the United States for six years." While we are not aware of the specific dates of the applicant's unlawful presence, the applicant had a child in the United States on February 21, 2006. As we have no record of any legal status the applicant held in the United States, she accrued unlawful presence when she remained in the United States for six years without status. As a result of this prior misrepresentation and unlawful presence, the applicant is inadmissible to the United

[1] Please note that the decision of the Officer-in-Charge, dated March 3, 2008, does not indicate that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. Nonetheless, the applicant admitted that she lived in the United States for six years as will be discussed further below.

States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. 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 [Secretary] may, in the discretion of the [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 [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)(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.

In the present case, the record reflects that the applicant sought admission into the United States on or about June 16, 2000,[2] by presenting a fraudulent Peruvian passport. She was processed for expedited removal and returned to Peru. Prior to that incident, she also attempted to enter the United States in November of 1999 using a fraudulent document. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her fiancé, and, as aforementioned, her Form I-129F has already been approved.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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. *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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

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[2] Please not that the decision indicates that the applicant was removed on June 16, 2003. However, we are relying on information in the file which indicates that the applicant was removed on June 16, 2000.

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, 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 (9th 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 applicant's qualifying relative in this case is her fiancé, a United States citizen.

The record indicates that the applicant has a child with her qualifying fiancé. 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 fiancé is the only qualifying relative for the waiver under sections 212(i) and 212(a)(9)(B) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's fiancé.

The evidence provided which specifically relates to the applicant's hardship includes letters written by the qualifying fiancé and the applicant and the qualifying fiancé's prescription for an antidepressant.

The qualifying fiancé provided a letter on appeal accompanied by his prescription for an antidepressant. In his letter, he apologized for the actions of his fiancé and also indicated that he has been encountering stress and depression as a result of his separation from the applicant. However, as in the initial waiver application, the appeal failed to specifically indicate the hardships faced by the applicant's fiancé.

The AAO finds that the applicant's fiancé is not suffering from extreme hardship as a consequence of being separated from the applicant. While he may be suffering due to the separation from his fiancé emotionally, these hardships are not outside the usual difficulties encountered when someone close to you is removed. Further, the applicant failed to properly document any of the emotional hardships faced by her fiancé. While she provided a copy of his prescription, there was no evidence such as doctor's letters or letters from friends or family to demonstrate that the emotional hardships faced by the applicant's fiancé are beyond the usual consequences of removal.

The record is also silent with regard to whether the applicant's inadmissibility is causing a financial hardship on the applicant's fiancé. No financial documentation of the fiancé's expenses, such as mortgage payments and/or rent, car payments, credit card obligations or other expenses,

was provided to demonstrate that the separation may pose a financial burden upon the qualifying fiancé consistent with a finding of an extreme hardship.

The AAO likewise finds that the applicant has not met her burden in showing that her fiancé would suffer extreme hardship if he relocated to Peru. The record contains no documentation regarding unsafe country conditions in Peru, particularly in the location where the applicant resides or other locations where she and her fiancé would likely reside. If the applicant's fiancé relocated to Peru, he would no longer experience the emotional hardships associated with separation.

Should he relocate to Peru, he may lose his employment and his current benefits. However, this is a common result of removal or inadmissibility. Moreover, the applicant has failed to submit detailed evidence concerning his current employment or his potential available employment opportunities in Peru in his field.

Moreover, the record also fails to indicate whether the qualifying fiancé has any family members or friends in the United States that he would be separated from, should he join his fiancé in Peru.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying fiancé, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen fiancé as required under sections 212(i) and 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B) 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.