U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: FEB 06 2004

IN RE: [redacted]

PETITION: 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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States by a consular officer 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 admission into the United States by fraud or willful misrepresentation in June 1998 and again in July 1998. The applicant married a native of Peru in Peru on August 14, 1998, and his wife became a naturalized U.S. citizen on November 21, 2001. The applicant is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on his U.S. citizen spouse if his waiver were denied. The application was denied accordingly. *See* Decision of the Officer in Charge, dated August 31, 2002.

The decision of the district director was affirmed on appeal by the AAO. *See* Decision of the AAO, dated February 25, 2003.

On motion to reopen and reconsider, counsel states that the decision of the AAO was inconsistent with case law. Counsel further asserts that there are new facts in the application to consider. Counsel contends that the applicant's spouse did not know that the applicant attempted to enter the United States by fraud or willful misrepresentation at the time of their marriage. Further, counsel states that the AAO did not consider the emotional, financial and psychological effects of separation on the couple. *See* Motion to Reopen & Reconsider 212(i) Waiver Application, dated March 24, 2003.

In support of these assertions, counsel submits a psychosocial evaluation for the applicant's spouse, dated April 22, 2003 and an affidavit of the applicant's spouse, dated March 21, 2003. The record also contains a brief of counsel, dated September 20, 2002; copies of the current U.S. passport and expired Peruvian passport of the applicant's spouse; an affidavit of the applicant, undated; a letter from the father of the applicant's spouse, undated; a copy of the naturalization certificate for the father of the applicant's spouse; copies of the permanent resident cards issued to the mother, two sisters and nephew of the applicant's spouse; an affidavit of the applicant's spouse, dated September 24, 2002; a Peruvian document certifying the applicant's entries and exits to and from the country; a letter from a co-worker of the applicant's spouse, dated September 20, 2002; financial and tax documentation for the applicant's spouse; photographs of the applicant and his spouse and letters evidencing correspondence between the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the application.

The record reflects that, on two occasions in 1998, the applicant knowingly obtained fraudulent passports in assumed names and used those documents to attempt to gain admission into the United States by fraud, a felony.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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.

A section 212(i) waiver of the bar to admission resulting from 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 application is that suffered by the applicant's wife. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel submits a "psychosocial evaluation for immigration purposes" for the applicant's spouse prepared by a healthcare consultant specializing in forensic evaluations to evidence the hardship imposed on the applicant's wife by separation from the applicant. *See* Psychosocial Evaluation, dated April 22, 2003. The AAO notes that the psychologist preparing the evaluation does not have an ongoing relationship with the applicant's spouse. In

fact, the evaluator states, "The following report is based on one interview with Ms. Perez. ... In addition, I briefly spoke with by phone in Lima, Peru." *Id.* at 1. The majority of the evaluation is devoted to an accounting of the upbringings and backgrounds of the applicant and his spouse. The small portion of the evaluation addressing the mental status of the applicant's spouse indicates that she sought medical and psychotherapeutic assistance in 1999 and was prescribed anti-anxiety medications. *Id.* at 3. The record does not establish, beyond the statement of the evaluator, ongoing treatment or medication prescribed for the applicant's spouse in relation to an emotional or mental condition. The record does not establish the effectiveness of any medication taken by the applicant's spouse. The applicant's spouse states that she is seeing a psychologist. *See* Affidavit of dated March 21, 2003. However, the record does not evidence contact with a psychologist other than Dr. Mark S. Silver, the psychologist who prepared the evaluation and first met the applicant's wife on April 21, 2003.

Counsel asserts that the applicant's spouse would experience extreme hardship as a result of relocation to Peru as her entire family now resides in the United States and conditions in her country have allegedly experienced a downturn since she departed. *See* Memorandum of Law, dated September 20, 2002 and Psychosocial Evaluation, dated April 22, 2002. However, the record does not establish that the applicant's wife would be unable to find suitable employment or reestablish herself in Peru, a country where she resided for the majority of her life. Further, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to leave the United States and live abroad as a result of the denial of the applicant's waiver. While counsel asserts that the applicant's spouse faces financial hardship in the United States as the sole source of support responsible for paying all of the couple's expenses, the psychosocial report indicates that the applicant has a college degree and works as a computer programmer. *See* Psychosocial Evaluation at 2. Further, the record does not evidence that the applicant's spouse is unable to support herself currently or was unable to support herself prior to her marriage.

Counsel fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, counsel fails to establish that the prior decision of the AAO was based on an incorrect application of law or Immigration and Naturalization Service [now Citizenship and Immigration Services] policy.

U.S. court decisions have repeatedly 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior decision of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in his appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 previous decisions of the district director

and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of February 25, 2003 dismissing the appeal is affirmed.