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

U.S. Citizenship and Immigration Services

FILE: Office: LIMA, PERU Date: MAR 01 2004

IN RE: Applicant:

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 and the application to reapply for admission after removal were denied by the Officer in Charge, Lima, Peru and are 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 willful misrepresenting a material fact while attempting to procure admission into the United States on June 1, 2002. The applicant was removed from the United States pursuant to section 235(b)(1) and therefore she is inadmissible pursuant to § 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to travel to the United States to reside with her U.S. citizen spouse.

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 accordingly. Additionally he denied the application for permission to reapply for admission into the United States after deportation or removal as a matter of discretion. *See Officer in Charge Decision* dated February 28, 2003.

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 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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that on June 1, 2002 the applicant presented an altered Peruvian passport that contained fraudulent Peruvian immigration entry/exit stamps in an attempt to gain admission into the United States by fraud and willful misrepresentation of a material fact. The applicant was removed from the United States pursuant to section 235(b)(1) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act 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 the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed 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.

On appeal, the applicant assert that Citizen and Immigration Services, (CIS) failed to correctly assess extreme hardship to her spouse (Mr. _____ and the consular officer abused his discretion since the marriage between the applicant and her spouse is in good faith. In support of this assertion, the applicant submitted an affidavit from her spouse and a letter from his doctor. In the affidavit Mr _____ states that his health has been affected, that he feels very bad and that it will be impossible for him to live and work in Peru. In the doctor's letter it is stated that Mr. _____ health has deteriorated in the past year to year and a half due to constant stress, he is not able to properly sleep, eat, work, and socialize and he has had several episodes of chest pain and uncontrollable blood pressure. The doctor recommends that Mr. _____ be granted the privilege of being united with his wife in order to avoid further deterioration of his mental and physical health. The letter, however, does not indicate whether any of these conditions were pre-existing of how it was determined that the problems were related to his wife's' absence.

There are no laws that require Mr. _____ to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

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 (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. 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if she were not permitted to enter 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.

As mentioned previously the applicant was removed from the United States pursuant to section 235(b)(1) of the Act and therefore she is inadmissible pursuant to § 212(a)(9)(A)(i) of the Act.

Section 212(a)(9). Aliens previously removed.-

(A) Certain aliens previously removed.-

> (i) Arriving aliens.– Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.
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> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Since the applicant's appeal for a waiver of inadmissibility under section 212(a)(6)(C) of the Act has been dismissed no purpose would be served in adjudicating his application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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