PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

#2

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: APR 15 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[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 Assistant Officer in Charge, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant is a native and citizen of Peru. She 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 having sought to procure a visa by knowingly and willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her now naturalized U.S. citizen spouse. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with her U.S. citizen spouse and children.

The Assistant Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Assistant Officer in Charge Decision* dated June 16, 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 reflects that in 1996 at the American Embassy in Lima, Peru the applicant submitted a fraudulent marriage certificate when she applied for asylum status as a derivative spouse.

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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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, counsel states that Immigration and Customs Enforcement (ICE), committed legal error and abuse of discretion in assessing the extreme hardship that would be imposed upon the applicant's spouse (Mr. f the waiver application is denied. Counsel submits affidavits from family and friends regarding the stability of the applicant's marriage, the emotional condition of Mr nd the necessity for the applicant to enter the United States in order to assist with the mental stability of her U.S. citizen spouse. Additionally, counsel submits a report from a psychologist and from a psychotherapist. Both observed that Mr. suffers from depression. In a letter dated July 7, 2003, the psychologist states that Mr. does not report suicidal ideations. In his July 14, 2003 assessment the psychotherapist notes that Mr. s becoming suicidal and is in need of expert care. Both stated that the presence of the applicant would most likely alleviate his depression. Counsel, and Mr tate that Mr cannot relocate to Peru because he was persecuted there and granted asylum in the United States, and his life would be in danger if he were to return to Peru.

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 facts 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).

In the present case, the record reflects that the applicant's U.S. citizen spouse is unable to relocate to Peru due to his previous persecution in that country. The record further reflects that the Mr. suffers from major depression and is becoming suicidal, and being reunited with his spouse would improve his present mental condition. The AAO finds that the totality of the new evidence provided in the applicant's appeal demonstrates that the emotional and practical effects of family separation on Mr and the applicant go beyond the hardships normally experienced by family members of an excluded alien. The AAO therefore finds that the applicant has established that her husband will suffer extreme hardship if she is not allowed to travel to the United States to reside.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States, which are not outweighed by adverse factors. *Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957) states in pertinent part:

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's

> immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

The adverse factor in the present case is the applicant's submission of a fraudulent marriage certificate along with her immigration application for a status as a follow-to-join as asylee.

The favorable factors in the present case are the extreme hardship to the applicant's U.S. citizen spouse; the existence of an approved petition for alien relative; the affidavits submitted from friends and relatives; the absence of a criminal record; the family ties the applicant has in the United States; and the fact that the applicant's U.S. citizen spouse cannot relocate to Peru because he was granted asylum status based on his persecution in that country.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Furthermore, the AAO finds that taken together the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.