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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAY 17 2004

IN RE: Applicant: [redacted]

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:

[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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru. He 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 nonimmigrant visa by knowingly and willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen mother. The applicant 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 his U.S. citizen mother and siblings.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated June 10, 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 in September 1983 during his application for a nonimmigrant visa at the American Consulate in Lima, Peru the applicant knowingly and willfully misrepresented material facts by presenting fraudulent documents in order to procure a nonimmigrant visa. After the non-immigrant visa application was denied the applicant arranged and entered the United States without inspection. He resided and worked in the United States illegally for three years and returned to Peru because he missed his family.

On January 15, 1991, the applicant's mother filed a Form I-130 on behalf of the applicant as her single adult son when in fact he had been married since May 1988. The applicant stated to a Consular Officer in Lima, Peru that the Form I-130 was filed in that manner because it would be faster.

On appeal counsel states that the applicant's mother did not know that the applicant was married at the time she filed the Form I-130 and that she never admitted to a consular officer that she knew that it was against the law. The record of proceedings reveal that the applicant stated that his mother filed the Form I-130 for him as an unmarried adult son because it would be faster and that the petitioner knew it was not correct. The AAO finds that the Officer in Charge erred in stating in his decision that the petitioner made the above-mentioned statement but finds this error to be harmless. The applicant is inadmissible under section 212(a)(6)(C) 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 his U.S. citizen mother.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (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 Citizen and Immigration Services, (CIS) failed to correctly assess the extreme hardship the applicant's mother would suffer if the applicant's waiver application is denied and he is not permitted to travel to the United States at this time. Counsel submits a brief and an affidavit from the applicant's mother. Counsel further states that CIS did not balance the favorable factors in the applicant's case against the adverse factors required to decide whether a waiver is merited in the Secretary's discretion.

Before the AAO can look into the favorable and unfavorable factors in this case it must first determine if the qualifying family member would suffer extreme hardship if the applicant's waiver application was not approved.

Counsel states that the act of presenting fraudulent documentation does not rise to the level of fraud and misrepresentation contemplated by immigration laws. By presenting fraudulent documentation in an attempt to procure a non-immigrant visa the applicant is clearly inadmissible under section 2121(a)(6)(C) of the Act.

The applicant's mother submits an affidavit in which she states that she is desperate to bring the applicant to the United States so he can improve his living conditions and to provide a better future for her granddaughters. She states that she wants all her children living with her in the United States and that it is

extremely painful to have seven of her children with her and not the applicant and his family. She further talks about the economic situation of the applicant in Peru, which makes her extremely depressed.

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 mother would suffer extreme hardship if he were not permitted to enter 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(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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.