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**U.S. Citizenship
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Services**

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FILE:



Office: LIMA, PERU

Date: SEP 07 2005

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Acting 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Acting Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated May 24, 2004.

On appeal, the applicant asserts that her spouse will suffer extreme hardship if she is prohibited from entering the United States. *Brief in Support of Appeal*, dated June 18, 2004. The applicant further contends that the Acting Officer in Charge failed to consider all relevant factors in assessing the hardship to her spouse. *Id.*

The record contains a statement from the applicant's spouse in support of the appeal; a brief from an attorney; statements from the applicant and her spouse in support of the Form I-601, Application for Waiver of Ground of Excludability; a copy of the results of a DNA test reflecting the probability that the applicant's spouse is the father of the applicant's youngest child; a copy of the birth certificate of the applicant's youngest child; copies of the driver's license and social security card of the applicant's spouse; a copy of the marriage certificate of the applicant and her spouse, and; a copy of the applicant's spouse's birth certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that, while the Form I-290B appeal was filed by an attorney with an accompanying brief, the record does not contain a properly executed Form G-28, Notice of Appearance as Attorney or Representative, to show that the applicant has consented to representation. Thus, the applicant is considered self-represented.

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 application, the record indicates that the applicant entered the United States without inspection on or about January 8, 2001. On or about August 16, 2003, the applicant departed the United States to attend an immigrant visa interview with the U.S. Embassy in Lima, Peru pursuant to an approved Form I-130, Petition for Alien Relative, filed on her behalf. Thus, the applicant was unlawfully present in the United States for approximately two years and seven months. Accordingly, the applicant was found inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant does not contest her inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

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 case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s spouse implies in his statements that he would remain in the United States with his child if the applicant is prohibited from returning to the United States. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, the applicant’s spouse states that he is a U.S. citizen and his entire family resides in the United States. *Statement from Applicant’s Spouse on Appeal*, dated June 17, 2004. The applicant’s spouse provides that he and the applicant have a 21-month old U.S. citizen son, and that he is experiencing difficulty caring for the child without the assistance of the applicant. *Id.* In a statement submitted with the Form I-601 application, the applicant’s spouse indicated that he has no other relatives or friends in the United States to assist him in raising his son, and that he is compelled to hire a babysitter. *Statement from Applicant’s Spouse in support of Form I-601*. The applicant’s spouse provides that he cannot relocate to Peru, as he would lose his current career opportunities and benefits, including health and life insurance as well as his pension. *Statement from Applicant’s Spouse on Appeal* The applicant’s spouse indicates that he does not read or write Spanish, nor is he a fluent speaker, thus his employment opportunities would be limited in Peru. *Id.* The applicant’s spouse states that the applicant had a good job as a chef in the United States, and that they require her U.S. salary in order to purchase a home in the United States. *Id.*

In a statement submitted in support of the Form I-601 application, the applicant provided that she has two children in Peru. *Statement from the Applicant in Support of Appeal*, dated June 17, 2004. The applicant’s spouse states that the applicant’s mother is currently in the United States. *Statement from the Applicant’s Spouse on Appeal*.

The applicant submits a letter from an attorney in which he asserts that there are few negative factors weighing against the applicant is assessing whether she warrants a favorable exercise of discretion, and that the equities are sufficient to counterbalance her unlawful presence. *Brief in Support of Appeal* at 4-5. The attorney indicates that the applicant suffered “political abuse” in Peru. *Id.* at 5. The attorney reiterates the factors to be considered in assessing extreme hardship as provided in *Matter of Cervantes-Gonzalez*, and contends that the Acting Officer in Charge failed to consider all relevant factors in assessing the hardship to the applicant’s spouse. *Id.* at 6-7, 9. The attorney asserts that the applicant’s spouse would have serious difficulty assimilating into Peruvian life and society due to his language inability and status as a Caucasian American. *Id.* The attorney states that the applicant’s spouse has no family ties in Peru, yet he has financial ties to the United States. *Id.* at 7-8. The attorney asserts that the Acting Officer in Charge discussed elements of hardship individually, but failed to consider all relevant factors in aggregate. *Id.* at 11. The attorney contends that “[t]he [applicant’s] spouse’s medical condition was ignored.” *Id.* at 6. The attorney provides that the applicant’s spouse would suffer extreme hardship were he required to accompany the applicant to Peru and leave their business, or to separate from [her] and remain in his home country where he has lived his whole life.” *Id.* at 11. The attorney states that the applicant and her spouse have “ties to an extensive family and work network in [the United States.]” *Id.* at 11-12.

Upon review, the applicant has not established that her spouse would suffer extreme hardship should she be prohibited from entering the United States. The hardships described by the applicant’s spouse primarily include the economic and emotional difficulty he is experiencing due to raising his son without the applicant’s

assistance; his lack of economic opportunities in Peru and the possible sacrifice of his career in the United States; and his economic hardship due to the applicant no longer drawing her salary from her employment in the United States.

The applicant's spouse has not expressed that he is experiencing emotional hardship directly due to his separation from the applicant. Rather, he indicates that his emotional burden stems from the fact that his son longs for the applicant. Thus, the record does not support that the applicant's spouse is experiencing unusual emotional hardship as a result of the applicant's absence. 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, *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 applicant's spouse's situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

It is noted that the attorney's letter states that the applicant's spouse has "ties to an extensive family . . . in [the United States.]" *Id.* at 11-12. The applicant's spouse states that the applicant's mother is currently in the United States. *Statement from Applicant's Spouse on Appeal*. Thus, the record reflects that the applicant's spouse should have emotional support in raising his son in the United States.

The applicant's spouse provides that he will suffer economic hardship as a result of the applicant's inadmissibility. Specifically, the applicant's spouse states that, as a result of the applicant's absence, he must hire a caregiver for his son while he works. The applicant's spouse indicated that he and the applicant cannot realize their goal of purchasing a home in the United States without the applicant's U.S. salary. However, these economic consequences do not rise to the level of extreme hardship. The record does not reflect that the applicant's spouse will be unable to maintain his financial position without the assistance of the applicant. 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 applicant's spouse states that, should he relocate to Peru, he will be unable to find suitable employment, and that the loss of his career and employment benefits in the United States will represent a significant hardship. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, the applicant has not submitted evidence to show that her spouse would have difficulty adjusting to Peru beyond that which would normally be expected. As evidence of her spouse's employment, the applicant submits a copy of her spouse's taxi driver's permit. The applicant has not shown that comparable work is unavailable in Peru, or that her spouse would require advanced reading and writing skills to continue his trade. The attorney's letter provides that the applicant's spouse would suffer extreme hardship were he required to accompany the applicant to Peru and leave their business. Yet, the applicant has provided no evidence that she or her spouse own a business in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The attorney's letter contends that "[t]he [applicant's] spouse's medical condition was ignored." *Brief in Support of Appeal* at 6. However, the record of proceeding contains no documentation to show that the applicant's spouse suffers from health problems or is currently receiving medical treatment. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The attorney's letter indicates that the applicant suffered "political abuse" in Peru. *Brief in Support of Appeal* at 5. This assertion suggests that the applicant's spouse would be at risk of harm should he relocate to Peru with the applicant. However, the applicant has provided no explanation or evidence to show that she has experienced difficulties with government authorities or other groups in Peru. In fact, the applicant stated that she migrated to the United States "[d]ue to the oppressing economic and moral condition in [Peru.]" *Statement from the Applicant in Support of Appeal*. Counsel's assertion is not supported by statements from the applicant or the evidence of record.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's spouse should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. Thus, the applicant has not shown that the refusal of her admission would result in extreme hardship to a qualifying relative, and she is statutorily ineligible for relief. *See* section 212(a)(9)(B)(v) of the Act. Accordingly, Citizenship and Immigration Services (CIS) lacks the discretion to approve the application for a waiver, and no purpose would be served in discussing the balance of positive and negative factors that would determine whether she merits a waiver as a matter of discretion. *Id.*

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.