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U.S. Citizenship
and Immigration
Services

413

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FILE:

Office: LIMA, PERU

Date: DEC 05 2006

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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.

The officer-in-charge found that based on the available facts, the applicant failed to establish that her qualifying relative would undergo extreme hardship through her continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated April 5, 2005.

On appeal, counsel states that the applicant has met her burden of showing extreme hardship. He submits new evidence in support of this appeal. *Counsel's Brief*, April 28, 2005.

In the present application, the record indicates that the applicant entered the United States without inspection in September 1995. The applicant remained in the United States until October 2004. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 2004, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her October 2004 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

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 alien herself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Peru or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Peru. The record does not contain any assertions regarding the possibility of the applicant's spouse relocating to Peru to be with the applicant. Therefore, the AAO finds that the applicant has not established that relocation to Peru would cause extreme hardship to her U.S. citizen spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse submitted an affidavit where he explains the emotional hardship he has faced from being separated from the applicant. The applicant's spouse states that he cannot sleep, he does not eat and he feels a terrible emptiness. He states that he has missed days at work and that it is hard for him to function while he is at work. He also states that he went to a doctor who says he is suffering from depression. He seems to indicate that the doctor prescribed him medication that is not working. To support these assertions the applicant's spouse submitted a letter from [REDACTED], dated April 25, 2003, which states that the spouse was evaluated for symptoms of depression and that he was started on treatment for the depression. The letter also states that the applicant's spouse will have a follow-up evaluation in three to four weeks. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the depression suffered by the applicant's spouse. The applicant's spouse did not submit any follow-up reports from the psychologist. Moreover, the conclusions reached in the submitted report, being based on a single visit, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The applicant's spouse also explains in his affidavit the difficulty the applicant has had in becoming pregnant, how she had one surgery and that she will need surgery again at some point in the future. The AAO notes that hardships the applicant is experiencing are irrelevant to the waiver application. Therefore, the current record does not reflect that separation will result in extreme hardship to the applicant's spouse.

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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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.