

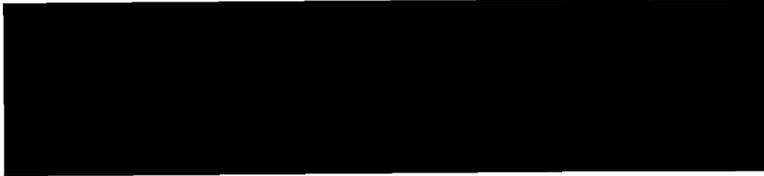
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**U.S. Citizenship
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FILE:



Office: LIMA, PERU

Date: JUN 05 2006

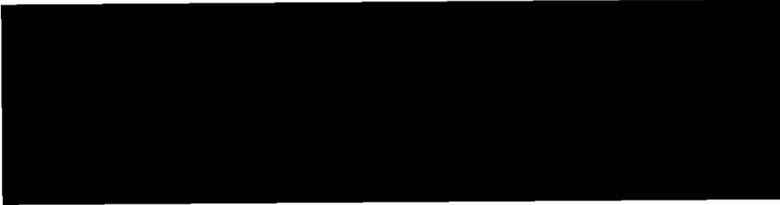
IN RE:



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.

Robert P. Wiemann, Chief
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 determined to be inadmissible to the United States by a consular officer 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. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and children.

The acting 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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated October 12, 2004.

On appeal, counsel states that Citizenship and Immigration Services erred in denying the waiver application because of the financial and emotional impact on the applicant's spouse resulting from her separation from the applicant. Counsel contends that the applicant's spouse has become homeless and bankrupt as a result of her separation from the applicant and has begun having suicidal thoughts. Counsel asserts that the decision of the acting officer in charge is discriminatory toward the applicant and implies that the applicant is an animal. *Form I-290B*, dated November 24, 2004. In support of these assertions, counsel submits a brief; a declaration of the applicant's spouse; letters from mental health professionals relating to the treatment of the applicant's spouse and child; a description of a medication prescribed to the applicant's spouse and copies of financial documents for the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

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 on or about December 24, 1994 without inspection. The applicant accrued unlawful presence from April 1, 1997, the date on which unlawful presence provisions under the Act went into effect, until the date of his departure from the United States on December 3, 2003. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

The AAO acknowledges counsel's assertion that the record reflects bias on the part of the acting officer in charge. Counsel contends that the decision of the acting officer in charge is discriminatory against the applicant because it states that he "sired" a Peruvian citizen child as well as a United States citizen child. *Applicant's Appeal Brief*, 4, dated February 3, 2005. Counsel reasons that use of this term demonstrates that the acting officer in charge considers the applicant to be an animal thereby negatively impacting the decision on the waiver application. *Id.* While the AAO regrets the insensitive use of language employed in the previous decision and questions the relevance of the applicant's paternity to adjudication of the instant application, the record fails to evidence discrimination on the part of the acting officer in charge in reaching a decision on the application; the acting officer in charge denied the application based on the applicant's failure to demonstrate that extreme hardship is imposed on his United States citizen spouse as a result of the applicant's inadmissibility.

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 himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by 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).

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

Counsel contends that the applicant's spouse suffers extreme hardship as a result of separation from the applicant. Counsel indicates that the applicant's spouse was unable to afford the rent for the couple's

apartment in the absence of the applicant and now resides with her sister. *Applicant's Appeal Brief* at 5. Counsel asserts that the applicant's spouse and child have sought mental health treatment to deal with the psychological hardship imposed as a result of separation from the applicant. *Id.* Counsel provides a brief letter from the coordinator of an adult outpatient program at a community health center stating that the applicant's spouse participates in mental health services on a monthly basis at the facility. *Letter from [REDACTED]* dated December 13, 2004. Counsel also submits a copy of a no self harm contract signed by the applicant's spouse promising that she will seek assistance via telephone in the event that she has thoughts or feelings of harming herself or others. *No Self Harm Contract*, dated November 10, 2004. Counsel also provides a copy of a prescription for Paxil issued to the applicant's spouse and a description of that medication and its effects. While the submitted documentation evidences that the applicant's spouse experiences and receives treatment for depression, the record fails to provide particularized information relating to the history of the mental health condition of the applicant's spouse, her ongoing relationship with a mental health professional and/or the success or failure of relief from her symptoms that she has experienced with prescribed medication. In the absence of comprehensive information relating to the mental health of the applicant's spouse, the AAO is unable to render a finding of extreme hardship based on psychological suffering. While counsel contends that the applicant's spouse is unable to survive financially in the absence of the applicant, the record fails to address whether or not the applicant is able to obtain employment in a location outside of the United States in order to support himself and his family. The AAO acknowledges that the record contains wire transfer receipts indicating the forwarding of funds by the applicant's spouse to the applicant, but counsel fails to articulate the significance of these transfers and the record does not address the employment situation of the applicant.

Moreover, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, a finding of extreme hardship cannot be rendered. The record fails to address any hardship that would confront the applicant's spouse as a result of relocation to Peru in order to reside with the applicant including, but not limited to 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.

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. Moreover, the AAO notes that 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 AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However,

her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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 he 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.