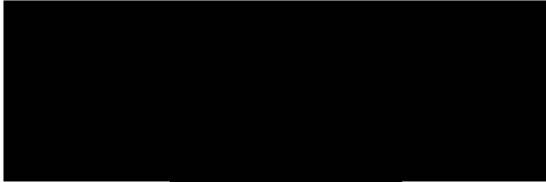




U.S. Citizenship
and Immigration
Services

identifying data deleted to
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invasion of personal privacy

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Date: OCT 10 2006

FILE:

Office: LIMA, PERU

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act (INA), 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.

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

The applicant is a native and citizen of Uruguay who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been present unlawfully in the United States for one year or more and seeking admission within ten years of the date of his last departure or removal from the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife. The OIC concluded that the applicant 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 OIC*, dated December 22, 2004.

The applicant appealed this decision to the AAO on January 24, 2005. The Notice of Appeal, Form I-290B, includes a letter by the applicant's wife stating that "due to [the denial of her husband's waiver] I'm under medical treatment and continuously . . . must take many medicines. Attached please find some proofs including my husband's and his doctor's statements, indicating our delicate health condition." In support of this statement, the applicant submitted (1) seven receipts for prescriptions for his wife, filled between December 20, 2004 and January 17, 2005, for an anti-inflammatory, antibiotic, muscle relaxant, treatment for high blood pressure or chest pain, an inhaler and treatment for hay fever, allergy, or chronic asthma; (2) a letter from the applicant stating that his wife's weak health condition is worsening due to "the emotional disorders caused by the distance between us," and (3) a letter from a psychologist in Montevideo, Uruguay, that the applicant is suffering "a deep depressive status" and has twice weekly sessions with the psychologist for "behaviour cognitive therapy." The applicant does not identify specifically any erroneous conclusion of law or statement of fact for the appeal. Although the applicant noted that more evidence of her health condition would be submitted to the AAO within 30 days, to date the applicant has provided no new correspondence or documentation, and the record is considered complete.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

Regarding the applicant's ground of inadmissibility, the record reflects that the applicant entered the United States on February 13, 2001 under the Visa Waiver Pilot Project with authorization to remain until May 12, 2001; he remained until September 3, 2003, when he was ordered removed, thus remaining unlawfully for more than one year. The applicant is seeking admission within 10 years of his removal from the United States and is, therefore, inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant does not contest this finding.

Upon review, the AAO notes that the additional documents and letters submitted on appeal by the applicant have no relevance to a hardship determination for purposes of a section 212(a)(v) waiver. The doctor's letter refers to [REDACTED] treatment for depression, but hardship to the applicant is not a consideration for this waiver; hardship to the applicant's U.S. citizen wife is relevant, but taking various medications does not indicate that she cannot continue this treatment with or without the presence of her husband and does not support a finding of hardship. The AAO concurs with the OIC's decision and affirms the denial of the application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.