

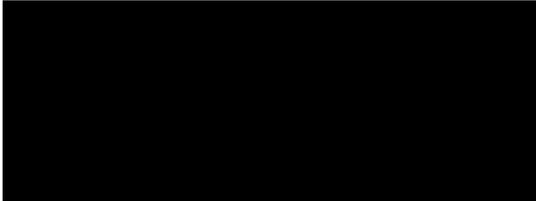
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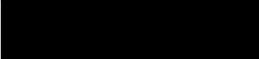
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LIMA, PERU

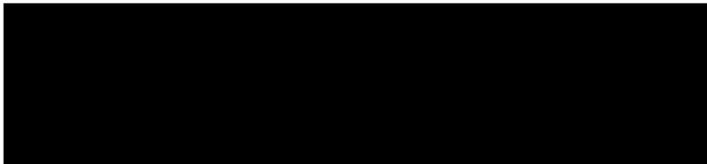
Date: AUG 26 2007

IN RE:



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

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 United States Citizenship and Immigration Services (USCIS) 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 Argentina who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. She 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 her U.S. citizen spouse.

The record reflects that the applicant entered the United States without inspection in August 2002 and remained in the United States illegally until voluntarily departing in November 2004. The applicant and her husband, a native of Mexico who became a naturalized citizen of the United States on April 16, 2004, were married on April 23, 2004 in Los Angeles, California. The applicant's husband filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on July 28, 2004. The petition was approved on August 27, 2004. The applicant filed Application for Immigrant Visa and Alien Registration (Form DS-230) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) in June 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated November 18, 2002.

On appeal, counsel submits additional evidence of hardship and asserts that the evidence submitted clearly establishes that the applicant's husband would suffer extreme hardship if the applicant is denied admission. Counsel also observes that the applicant's mother-in-law is completely dependent on the applicant's husband and would suffer financially and emotionally if he relocated to Argentina or if she herself relocated to Argentina.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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 [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.

The record reflects that the applicant entered the United States without inspection in August 2002 and remained in the United States illegally until voluntarily departing in November 2004. The applicant is now seeking admission to the United States. The applicant accrued unlawful presence from August 2002 through November 2004, a period in excess of one year. The applicant has not disputed that she was unlawfully present in the United States during this period and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children (or her mother-in-law) is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen husband is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

Counsel asserts that the applicant’s husband suffers emotionally from being separated from the applicant and financially from having to sustain two separate households in addition to supporting his elderly mother. Counsel maintains that the applicant’s husband cannot sustain two households and that he will experience financial ruin if he continues to be compelled to do so. Counsel contends that separation from his daughter causes the applicant’s husband emotional hardship, and that this hardship is intensified by the negative impact substandard living conditions and environmental health risks has on his child. Counsel contends that if the applicant’s husband relocated to Argentina, he would have to abandon his career as an engineer and would be unable because of his age to obtain similar employment “lucrative enough” to provide for his family. Counsel maintains that the only profession available to the applicant’s husband in Argentina would be that of a taxi driver, which would not offer compensation sufficient for the applicant’s husband to support his family. Counsel asserts that the applicant’s husband would suffer hardship in acclimating to life in Argentina because he has been living in the United States for most of this life (since 1978) and has “absolutely no ties with Argentina, family or otherwise.”

The record includes statements from the applicant’s husband; employment, tax and other financial records for the applicant’s husband; receipts showing funds sent by the applicant’s husband to the applicant in the Argentina; news articles and reports detailing health and other conditions in Argentina; financial and health records for the applicant’s mother-in-law; copies of job advertisements (in Spanish) for jobs in Argentina, and copies of family photographs. The entire record has been considered in rendering a decision on the appeal.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s husband faces extreme hardship if she is refused admission.

The AAO recognizes that the applicant's husband suffers emotionally as a result of his separation from the applicant. However, the evidence does not show that his suffering is atypical of individuals separated as a result of removal or inadmissibility. There is no evidence, for example, that the applicant's husband has been diagnosed with a recognized psychological or emotional disorder requiring medical treatment or that the emotional strain he experiences from being separated from the applicant has prevented him from working or otherwise functioning normally. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Likewise, although the applicant has submitted a table showing that \$1,369 is required each month from the applicant to support her and her two children in Argentina, the applicant has failed to submit specific evidence showing the nature and amount of her living expenses and the necessity thereof. The table purports to show that the applicant's husband spends more each month in supporting two households than he earns, but the evidence in the record is insufficient to demonstrate the factual basis for the information listed in the table. Furthermore, the applicant has not submitted evidence showing that the cost of her husband supporting her in Argentina exceeds what he would spend if she and her children were in the United States. The financial and tax records submitted by the applicant do not support the contention that the applicant's husband's current financial commitments exceed his income, or that his financial ruin will be the consequence of the applicant not being granted admission. While the assertions of the applicant, her husband and counsel are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. See *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 evidence is not sufficient to show that the financial hardship experienced by the applicant's husband is atypical of individuals separated as a result of removal or inadmissibility.

Furthermore, the applicant has not submitted sufficient evidence showing that her husband would experience extreme hardship should he relocate to Argentina. The applicant has provided several job advertisements written in the Spanish language that purportedly show that her husband would be unable to find work as an engineer in Argentina because of his age. 8 C.F.R. § 103.2(a)(3) states:

Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As no English translation of the job advertisements has been provided, they cannot be considered. Regardless, a few job advertisements is not sufficient to demonstrate the widespread age discrimination the applicant claims will prevent her husband from finding suitable employment in Argentina. As stated above,

going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests 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.