

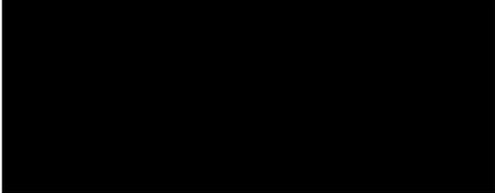
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LIMA, PERU

Date:

DEC 27 2007

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 cursive script, 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 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 his last departure. The applicant seeks a waiver of inadmissibility based on the claim that his U.S. citizen wife will suffer extreme hardship if he is prohibited from entering the United States.

The officer in charge found that, based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the Officer in Charge*, dated July 3, 2007.

Upon filing the appeal, counsel asserted that the applicant's wife would suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Brief in Support of Appeal*, dated July 27, 2007. However, the applicant's wife subsequently informed U.S. Citizenship and Immigration Services (USCIS) that she was filing for a divorce in the State of Washington, and that she wished to withdraw her Form I-130, Petition for Alien Relative, and Affidavit of Support that she filed on the applicant's behalf. *Letter from [REDACTED]*, dated October 11, 2007.

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 matter, the record indicates that the applicant entered the United States without inspection in approximately October 2003. The applicant married a U.S. citizen in October 2004. The applicant departed the United States in September 2006 to attend an immigrant visa interview at the U.S. Embassy in Lima, Peru. Accordingly, the applicant 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 his last departure from the United States. The applicant does not contest his 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 alien himself experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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.

As noted above, the applicant bases his application for a waiver on the claim that his wife would suffer emotional and economic hardship should he be prohibited from entering the United States. The applicant submitted a statement from his wife, dated July 22, 2007, in which she asserted that she would experience emotional and economic hardship should the present waiver application be denied. *Statement from the Applicant's Wife*, dated July 22, 2007. The applicant's wife further highlighted her health problems, and stated that her conditions would be exacerbated by the applicant's continued absence. *Id.* However, the applicant's wife subsequently informed USCIS that she was filing for a divorce in the State of Washington, and that she wished to withdraw her Form I-130, Petition for Alien Relative, and Affidavit of Support that she filed on the applicant's behalf. *Letter from* [REDACTED] at 1.

Upon review, as the applicant's wife is voluntarily divorcing the applicant and withdrawing her support of his immigration status, it is evident that she is not depending on his financial or emotional support. Thus, the AAO cannot conclude that she would experience extreme hardship should the applicant's waiver application be denied.

The applicant has not identified any other qualifying relatives who may experience extreme hardship should he be prohibited from entering the United States. 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 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.