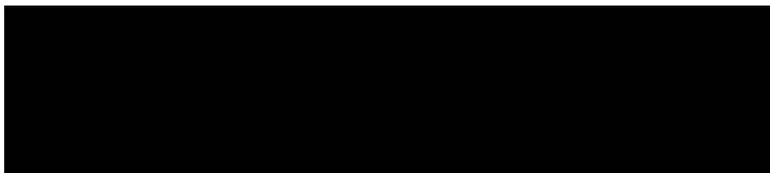




U.S. Citizenship
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Services

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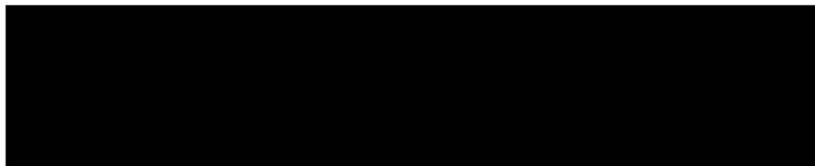
Date: FEB 22 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality 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 Officer in Charge (OIC), Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 record indicates that the applicant is the wife of a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 husband.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated July 5, 2005.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to her United States citizen husband. *Form I-290B*, filed July 25, 2005.

The record includes, but is not limited to, counsel's brief and an affidavit from the applicant's spouse, dated May 16, 2004. The entire record was reviewed and considered in arriving at a decision on the 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 a B1/B2 nonimmigrant visa in 1994. The applicant filed an Application for Asylum (Form I-589), which was denied by an asylum officer and referred to an Immigration Judge. On July 18, 1996, before an immigration judge, the applicant withdrew her asylum application and requested voluntary departure, which the immigration judge granted. The applicant was granted voluntary departure until January 18, 1997. She did not depart as required. On December 29, 2000, the applicant married [REDACTED]; however, they divorced on October 24, 2002. The applicant was removed from the United States on October 8, 2003. On December 22, 2003, the applicant and [REDACTED] remarried in Peru. On February 9, 2004 [REDACTED] filed a Petition for Alien Relative (Form I-130) for the applicant, which was approved on August 20, 2004. On or about May 23, 2005, the applicant filed a Form I-601 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On July 5, 2005, the OIC denied the applicant's Form I-212 and Form I-601, finding that the applicant had accrued more than 365 days of unlawful presence.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until October 8, 2003, the date the applicant was deported from the United States. The applicant is attempting to seek admission into the United States within 10 years of her October 8, 2003 departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 asserts that the applicant's husband would face extreme hardship if he relocated to Peru in order to remain with the applicant. Counsel claims that the applicant's husband would face emotional and psychological hardship if he relocates to Peru, because all of his immediate family is in the United States and the only person he knows in Peru is the applicant. *Brief attached to Form I-290B*, page 3, filed October 6, 2005. Additionally, counsel states [REDACTED] will likely face depression and anxiety and be placed in desperate circumstances if [sic] without his wife in the United States." *Id.*; see also *Affidavit of* [REDACTED], dated May 16, 2004 ("My wife being so far away is causing me extreme distress."). The AAO notes

that there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel claims the applicant's husband would be unable to obtain employment in Peru because of his advanced age. *Brief attached to Form I-290B*, page 4, filed October 6, 2005. The applicant's husband is financially supporting the applicant, and her mother, in Peru, while she attends the University of San Martin de Porres. *See Affidavit of [REDACTED] dated May 16, 2004*. The AAO notes that the applicant failed to provide any evidence that her husband could not obtain a job in Peru because of his age. The applicant's husband has experience working as a security guard and as an independent carrier, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Peru.

Counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and close proximity to his children and grandchildren. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant and her husband have been living apart since October 8, 2003, the date the applicant was deported from the United States. It does not appear that the applicant's husband has experienced financial hardship as a result of the separation from the applicant and there is no evidence that the applicant has ever contributed financially to her husband. Further, beyond generalized assertions regarding country conditions in Peru, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in Peru and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure, and has endured, hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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.