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FILE:

Office: LIMA, PERU

Date:

DEC 22 2008

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 record reflects that 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 more than one year. The applicant is engaged to be married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his fiancée in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen fiancée and denied the application accordingly. *Decision of the Officer in Charge*, dated September 27, 2006.

On appeal, the applicant's fiancée, \_\_\_\_\_ contends that she would suffer extreme hardship if the applicant's waiver application is denied.

The record contains, *inter alia*: a letter from \_\_\_\_\_ letters from \_\_\_\_\_ father and cousin; a letter of support from the applicant's friend; a letter from \_\_\_\_\_ nurse; copies of \_\_\_\_\_ prescription medications; a copy of \_\_\_\_\_ birth certificate; copies of the birth certificates of two of \_\_\_\_\_ children; financial documents; a copy of the Petition for Alien Fiance (Form I-129F); and a copy of the applicant's Nonimmigrant Visa Application. The entire record was reviewed and considered in rendering this 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 this case, the record indicates, and the applicant does not contest, that he entered the United States in July 1999 under the Visa Waiver Program and overstayed his visa, remaining in the United States until January or February 2004. He now seeks admission within ten years of his 2004 departure. Accordingly, he is 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself may experience is not a permissible consideration under 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, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, it is not evident from the record that the applicant's fiance would suffer extreme hardship as a result of the applicant's waiver being denied.

As an initial matter, the AAO notes that even though the applicant and his fiance are not yet married, the applicant's waiver application is reviewed under the same extreme hardship standard as set forth in section 212(a)(9)(B)(v) of the Act. As permitted by 8 C.F.R. § 212.7(a)(1)(i), applicants of either immigrant visas or K nonimmigrant visas may file an Application for Waiver of Grounds of Inadmissibility (Form I-601) at the consular office considering the visa application if the applicant is inadmissible. The waiver applications for K nonimmigrants visa applicants are reviewed on the same terms as waiver applications for immigrant visa applicants. *See* 66 Fed. Reg. 42587-01 at 42589 (August 14, 2001) (stating that K nonimmigrant applicants and immigrant visa applicants are subject to the same requirements and regulations, including section 212(a)(9)(B) of the Act, and both have the opportunity to apply for the same waiver provisions).

According to the letter [REDACTED] submitted with her appeal, she and the applicant started to date shortly before he left to go back to Argentina. She stated she learned he had overstayed his visa the night before he left, and that because she did not know how serious their relationship would become, she “went on with [her] daily life.” The couple lost contact with each other, but then reconnected through the internet and instant messaging. [REDACTED] visited the applicant in Argentina twice. She contends she and her fiance love each other and that, even though they are already married in their hearts, they would like to be married by law. [REDACTED] has three children from previous relationships and states that she would be unable to bring her children with her to Argentina because the fathers of the children would not consent. [REDACTED] who owns a five bedroom, three bath house on almost four acres of land in Florida, claims she would be unable to ship all of her possessions to Argentina and that it would be “devastating to have to leave them behind or sell them.” She claims that because of the escalation of bills, she has been receiving government assistance, and that if the applicant were permitted to return to the United States, she would be able to get off government assistance. [REDACTED] contends she would be unable to find employment in Argentina and that she would not be able to afford to pay for flights to visit her family if she moved to Argentina. She further claims that she would be unable to find a Pentecostal church to attend in Argentina as most of the churches are Catholic churches and she was unable to find a Pentecostal church the previous times she visited Argentina. Moreover, [REDACTED] states that she and her children do not speak Spanish, and that her youngest child, an eleven-year old son, attends tutoring classes and has trouble with his studies. In addition, [REDACTED] states that she would like to go back to college for Cosmetology, but that if she moves to Argentina, she would be unable to do so. Furthermore, she claims she and her children would be unsafe in Argentina. She also contends that the quality of health care in Argentina is inferior to that of the United States, and that her oldest daughter has been diagnosed with HPV, the virus that may lead to cancer. [REDACTED] takes medication for IBS-C which costs over \$200, causes her great pain, and can lead to colon cancer. Finally, [REDACTED] asserts it would be an emotional hardship for her to leave her family in the United States, particularly her grandparents who are in ill health.

Although the AAO recognizes that [REDACTED] will suffer hardship as a result of being separated from her fiance, according to [REDACTED] own account, she and the applicant did not begin a serious relationship until after she knew he had overstayed his visa and had already returned to Argentina. Therefore, the equity of their relationship and engagement, and the weight given to any hardship Ms. [REDACTED] may experience, is diminished as they began their relationship with the knowledge that the applicant might not be permitted to re-enter the United States. See *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien’s possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7<sup>th</sup> Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9<sup>th</sup> Cir. 1980) (a “post-deportation equity” need not be accorded great weight).

[REDACTED] claim almost exclusively addresses the hardship she would suffer if she went to Argentina to be with her fiance. If she had to move to Argentina to be with her fiancé, the AAO finds

that she would experience extreme hardship. [REDACTED] would be separated from her entire family with whom she is very close, including her three minor children who would be unable to move to Argentina with her due to custody issues with their biological fathers. [REDACTED] would also be separated from her parents, cousins, and grandparents who have health problems. In addition, she would need to adjust to a life in Argentina after having lived her entire life in the United States, a difficult situation considering she does not speak Spanish. Furthermore, she would have to give up her house and her job in the United States, and may not be able to find employment in Argentina given she does not speak the language. She would also have to give up her church, where her father is the minister, and may not be able to find a Pentecostal church in Argentina.

Nonetheless, [REDACTED] as the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her fiancé. Although the AAO is sympathetic to their circumstances, if [REDACTED] remains in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

claim that she would be able to get off government assistance if the applicant were permitted to return to the United States is unsupported by the record evidence. Although there is evidence [REDACTED] receives food stamps and medical benefits for her children, *Statement from the State of Florida Department of Children and Families*, dated September 22, 2006, there are no tax records in the record or documentation regarding her income or expenses. Furthermore, any financial difficulties [REDACTED] may be experiencing cannot be attributed to her fiancé's return to Argentina as there is no evidence her fiancé ever provided her any financial assistance. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

To the extent the record contains copies of two prescription medications for [REDACTED], there is no letter in plain language from a physician describing the diagnosis, treatment, prognosis, or severity of [REDACTED] health issues. Significantly, aside from stating that she has "IBS-C," *Letter to the Administrative Appeals Unit from [REDACTED]* does not elaborate or describe how her health condition impacts her daily life, and she does not contend that she requires

any assistance because of it. The only letter in the record from a health care professional is from a nurse, which merely states that [REDACTED] should have a repeat pap smear in three months. *Letter from [REDACTED]*, dated August 25, 1998. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiance 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)(v) 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.