



U.S. Citizenship
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Services

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FILE:

Office: Lima, Peru

Date:

MAR 18 2008

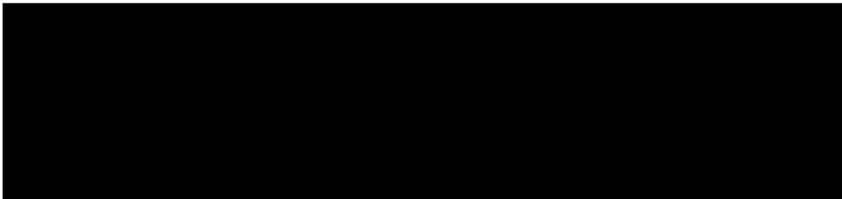
IN RE: Applicant:



APPLICATION:

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

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, 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 Peru who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States without inspection in June 1997 and remained until July 2005, when she traveled to Peru to apply for an immigrant visa. **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 return to the United States and reside with her spouse.**

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) relied on irrelevant and improper grounds in denying the waiver. Counsel further asserts that the evidence in the case, including additional documentation submitted with the appeal, supports a finding of extreme hardship to the applicant’s husband should the applicant be denied permission to return to the United States. Specifically, counsel maintains that the emotional and economic suffering caused by his separation from his wife and son and the physical and emotional suffering his son is experiencing in Peru have resulted in extreme hardship to the applicant’s husband. Further, counsel states that the applicant’s husband would suffer extreme economic, physical, and emotional hardship if he were to relocate to Peru.

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 Secretary, 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.

The AAO notes that the record contains several references to the hardship that the applicant's child has suffered since traveling to Peru with his mother. Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that CIS based the decision to deny the waiver application on an improper personal opinion. Specifically, counsel asserts that the reference to the applicant's prior marriages constitutes an impermissible ground upon which to deny the waiver. A review of the decision indicates, however, that the denial was not based on the applicant's previous marriages, but rather on insufficient evidence of extreme hardship to the applicant's husband. The officer-in-charge considered statements by the applicant and her husband concerning the potential adverse impact of giving up his job and being separated from his siblings, as well as the problems his son is experiencing in Peru. The officer-in-charge stated in the decision:

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. See *Attachment to Form I-292, Decision of Officer-in-Charge*.

Counsel states that there are several factors, when considered in the aggregate, that would amount to extreme hardship to the applicant's husband if she were denied admission to the United States. As evidence in support of the waiver application, counsel has submitted medical records for the applicant's son and letters from the applicant's husband, a psychologist who evaluated her husband, and various friends and co-workers.

The record reflects that the applicant resided in the United States from June 1997 to July 2005, when she traveled to Peru to apply for an immigrant visa. She met her husband in March 2002 and they married in December of that year and resided together in Fort Lupton, Colorado until the applicant left the United States in July 2005. In 2004, their son [REDACTED] was born, and he has resided in Peru with his mother since 2005. Counsel states that while living in Peru, the applicant's son has suffered from chronic diarrhea and abdominal problems, possibly exacerbated by separation from his father.

The record further reflects that the applicant's husband is a native of Mexico who has resided in the United States since 1970. He states that his two brothers reside in Colorado and he rarely returns to Mexico. He is fifty-four years old and claims that he has suffered from ulcers in the past and must maintain a strict diet. Letters from the applicant's husband and friends also indicate that he has suffered from depression since his wife and son have been outside the United States.

Counsel asserts that it would be difficult for the applicant's husband to find work if he relocated to Peru to reside with his wife because there are very few opportunities for the type of work he does, which includes operating a forklift and driving a semi tractor as a lead man at a prestressed concrete company. *See letter from [REDACTED], President, Rocky Mountain Prestress, dated March 17, 2006.* The AAO notes that although he has resided in the United States for some time, the applicant's husband is a native of Mexico and there is no indication that he does not speak Spanish or other evidence to support the assertion that he would be unable to find work in Peru. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel additionally asserts that it would be financially difficult for the applicant's husband to raise their son and work if the child returned to the United States without his mother. The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's husband states that he has a history of bleeding ulcers, and counsel asserts that due to this medical condition he would suffer extreme physical hardship if he relocated to Peru, where his ulcers might recur due to a change in diet. It is noted that no medical evidence of this condition is contained in the record. Further, the applicant's husband states that he was hospitalized in 1996 for this condition, and that through a strict diet it has been under control since then. No information about his diet or evidence that he would be unable to maintain a similar diet in Peru was submitted.

Counsel further asserts that being separated from his wife and son, as well as the medical problems his son has been experiencing in Peru, have caused the applicant's husband to suffer extreme emotional hardship. As evidence of this hardship counsel has submitted a letter from [REDACTED] [REDACTED], a psychologist who evaluated the

applicant's husband. The letter indicates that psychological testing was done and that the applicant is very depressed and should "seek a psychopharmacological evaluation immediately so that he can be placed on medications to help him deal with his severe depression as a result of this situation." See letter from [REDACTED] dated March 28, 2006. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on psychological testing and interviews of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for his depression. The letter does not indicate that the applicant's husband has received any treatment from Dr. [REDACTED] and in fact states that he should now be referred for further evaluation in order to begin treatment with antidepressants. It appears that the applicant's husband had not previously sought treatment for his symptoms before the denial of his wife's waiver application despite being separated from his wife and son for a period of ten months. The letter from [REDACTED] does not appear to reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The evidence does not establish that the depression the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Further, although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing his claim of extreme hardship, the evidence in the present case does not establish that the applicant's son is suffering from such a condition. Aside from counsel's assertions concerning their son's medical condition, the only evidence submitted is a statement by the applicant's husband that their son is having health problems, including a rare rash and bad diarrhea. Counsel also submitted medical documents in Spanish, which cannot be considered because they are not translated. See 8 C.F.R. § 103.2(a)(3), which states:

(3) Translations. Any document containing foreign language submitted to the Service [now Citizenship and Immigration Services] 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.

Furthermore, even if considered, these documents, which include two doctor's notes and a prescription to treat persistent diarrhea all issued in March 2006, do not appear to establish a significant, ongoing medical condition and in fact demonstrate that the applicant's son is receiving medical care in Peru.

The emotional and financial difficulties that the applicant's husband would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS, supra*, further held 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.

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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.