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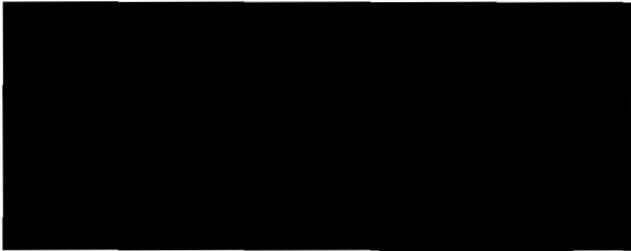
U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LIMA, PERU Date:

OCT 30 2008

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:

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.

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 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 his last departure from the United States.¹ The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The OIC noted that the bona fides of the applicant's marriage to his U.S. citizen wife were not shown when he presented himself to a U.S. Consular Officer in Lima, Peru. *Decision of the Officer in Charge*, dated August 15, 2006. The OIC also found that, based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen wife. *Id.* at 2-3. The application was denied accordingly. *Id.*

On appeal, the applicant asserts that he needs to return to the United States to reside with his wife so he can assist her with her sickness and provide economic support. *Statement from Applicant on Form I-290B*, submitted August 29, 2006.

The record contains a statement from the applicant in support of the appeal; statements from the applicant's children and wife; a copy of the applicant's son's naturalization certificate; a copy of the applicant's marriage certificate, and; certificates reflecting that the applicant does not have a criminal record. The entire record was reviewed and considered in rendering 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

¹ The record contains references to misrepresentations the applicant made to United States Consular Officers in Lima, Peru in connection with applying for an immigrant visa in the United States. However, the record does not reflect that the applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The AAO finds that the current record of proceeding lacks sufficient evidence or explanation to ascertain whether the applicant committed fraud or made a material misrepresentation such that he is inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the present Form I-601 application for a waiver will be adjudicated under the standard of section 212(a)(9)(B)(v) of the Act.

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 was admitted to the United States in 1973 in B-2 status as a visitor for pleasure. The applicant remained beyond his authorized stay, until approximately 2005. Thus, the applicant accrued unlawful presence from the date the unlawful presence provisions took effect, April 1, 1997, until he departed in 2005, totally approximately eight years. The applicant seeks reentry to the United States as an immigrant pursuant to an approved form I-130 relative petition filed on his behalf by his son. Accordingly, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act 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 irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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.

On appeal, the applicant asserts that he needs to return to the United States to reside with his wife so he can assist her with her sickness and provide economic support. *Statement from Applicant on Form I-290B* at 1. He provided that they take care of each other, and that his wife is very ill. *Statement from Applicant*, dated February 13, 2006.

The applicant's wife explained that she has health problems that have been exacerbated due to being separated from the applicant for over one year, including weight loss, shaking, and a weakened heart. *Statement from Applicant's Wife*, dated August 24, 2006. She provided that she has visited several doctors and she has been prescribed many medications. *Id.* at 1. She stated that she wishes to be reunited with the applicant, as she resides alone and feels lonely. *Id.*

The applicant provided statements from his children in which they explain hardships to the applicant due to his absence from the United States.

The applicant has not shown that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife explains that she is experiencing emotional hardship due to separation from the applicant. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that his wife is suffering unusual consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible.

The applicant and his wife indicated that the applicant's wife has health problems, and they suggest that the applicant's absence from the United States is exacerbating her condition. However, the applicant has not submitted any documentation from a physician or other medical professional to support that his wife has health problems. Such documentation should be available, as the applicant's wife explained that she has seen several doctors for her ailments. Thus, the applicant has not provided sufficient documentation to show by a preponderance of the evidence that his wife has health problems that will be impacted by his absence from the United States.

The applicant indicated that his wife relies on him for financial support. However, the applicant has not provided any explanation or documentation of his income or economic resources. Nor has he described his wife's income, resources, or financial needs. Therefore, the applicant has not established that his wife in fact requires or receives financial support from him.

The applicant has not shown that his wife will experience emotional or other consequences that are different or more severe than those ordinarily expected when spouses are separated as a result of inadmissibility. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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. *Hassan v. INS*, *supra*, 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. The AAO recognizes that the applicant's wife may endure hardship as a result of separation from the applicant. However, the applicant has not shown that such consequences rise to the level of extreme hardship.

The applicant has not asserted that his wife would experience hardship should she relocate to Peru with him. Thus, the applicant has not shown that she would suffer extreme hardship should she join him to maintain family unity.

Based on the foregoing, the applicant has not shown that his wife may serve as a qualifying relative. Nor has he shown that the instances of hardship that will be experienced by his wife, should he be prohibited from entering the United States, considered in aggregate, rise to the level of extreme hardship. 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.