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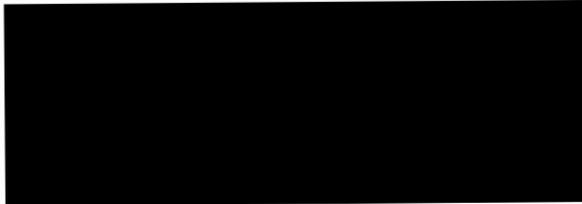
U.S. Department of Homeland Security  
20 Massachusetts Ave. NW Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:

Office: LIMA, PERU

Date: SEP 17 2008

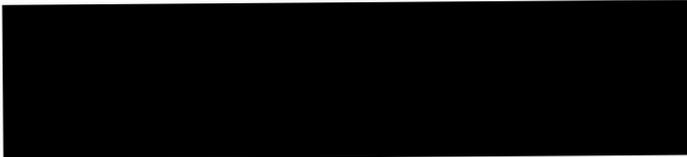
IN RE:



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:



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, 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 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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant failed to establish that his qualifying relative would suffer extreme hardship as a result of his continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated February 6, 2006.

On appeal, counsel states that the applicant does not agree with the hardship determination of the officer-in-charge. Counsel states that it is untrue that the applicant's spouse was aware of the likely outcome of the applicant's immigration case at the time of their marriage on January 3, 1998 and that it is permissible for an applicant to have more than one reason for coming to the United States. *Form I-290B*, dated February 16, 2006

In the present application, the record indicates that the applicant entered the United States on or about January 20, 1989 on a B-2 visitor's visa. *Form I-221*, dated December 24, 1996. On or about January 25, 1989 the applicant changed his status from a visitor to a student. *Id.* He states that he was enrolled as a student for two years. *Applicant's Statement*, dated October 15, 2002. In November 1996 the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589). On December 24, 1996 his application was referred to the immigration court and the applicant was placed into removal proceedings. On March 19, 1998, the applicant withdrew his asylum application and the immigration court granted the applicant voluntary departure to April 20, 1998. On April 20, 1998, the applicant filed an appeal to the Board of Immigration Appeals (BIA). The BIA denied this appeal on March 6, 2002 and the applicant was removed from the United States on October 28, 2002.

The AAO notes that a Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner and dated June 17, 1997 with the subject, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Act states that, "section 212(a)(9)(B)(iii) of the Act provides that certain periods of presence in the United States are not considered unlawful. This exemption includes time spent in the United States while the alien is: ... a bona fide applicant for asylum (including time spent while administrative or judicial review is pending), unless employed without authorization." In the applicant's case, his Form G-325A, Biographic Information form, and Citizenship and Immigration Services records indicate that he was working without authorization. Thus, he was accruing unlawful presence during the period of time when his asylum claim was pending. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until October 28, 2002, the date he departed the

United States. Therefore, the applicant is 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 one year or more.

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.

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 experiences due to separation or his children experience is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Peru and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states that since the applicant was removed from the United States she has had to become a single mother, which has been the toughest thing she has ever had to do. *Spouse's Statement*, dated February 24, 2003. She states that she and her children had to move out of their apartment in an upper middle class neighborhood and are now staying with relatives until they can find another apartment in a more affordable neighborhood. The applicant's spouse also states that she has been having problems at work because she has had to take time off to care for her children. She states that her son has been having behavioral problems and wakes up in the night crying for no reason. *Id.* Furthermore, the applicant's spouse states that her husband has not been able to find employment in Peru even though he has been there for four months. She states that she is having problems feeding her children and helping him at the same time. She states that she worries about his safety in Peru because there is a lot of political unrest and public protests concerning unemployment and crime rates. *Id.* In support of her assertions the applicant's spouse submitted letters from 16 family members and friends attesting to the applicant's good moral character and her struggles to raise her two children without the applicant. The applicant's spouse also submitted financial documentation, including bank statements, a credit card statement and tax returns. The applicant's spouse's 2003 Federal Tax Return showed an income of \$36,533.

In an update to her February 24, 2003 statement the applicant's spouse states that she is having problems with childcare costs and the needs of her children, including enrolling her son into kindergarten classes. *Spouse's Updated Statement*, undated. She asserts that the applicant's family members living in the Los Angeles area are unable to help her because they also need to work. She states that both of her children have asthma and require regular medical visits and medication. She also states that the separation is having an emotional effect on her children. In her updated statement she reiterates her concerns that the applicant has been unable to find employment in Peru. She feels that if she relocated to Peru she would also be unable to find employment and her children would not receive proper medical care for their asthma. *Id.*

In a third statement, dated July 21, 2008, the applicant's spouse states that she has moved to Peru with her children in order to be with the applicant. She states that she moved in May 2006 and that her children are

enrolled in a Spanish speaking school. She states that she is concerned because her children are not getting the same quality education they would receive in the United States and that the medical attention is better in the United States. She also states that she fears for her safety and the safety of her family while living in Peru because they are all U.S. citizens. *Spouse's Statement*, dated July 21, 2008.

Counsel's Brief, which pre-dates the applicant's spouse's relocation, asserts that the applicant and his spouse, both well-educated, will not be able to find employment in Peru if they were to relocate. *Counsel's Brief*, dated March 13, 2006. Counsel states that the applicant's spouse was forced to take out a loan to pay for her family expenses and has to support the applicant while he is in Peru. *Id.* In support of these assertions, counsel submits financial documentation showing a money market account with a total value of almost \$9,000 and a loan statement, showing an outstanding balance of \$4,115.96. Counsel also submits a letter from the applicant's children's doctor, [REDACTED]. Dr. [REDACTED] states that the applicant's children are both patients in his office, are treated for asthma and are currently taking preventative medicines. *Letter from [REDACTED]* undated.

The AAO recognizes that the applicant's spouse is experiencing hardships as a result of the applicant's departure from the United States. However, the record does not demonstrate that these hardships rise to the level of extreme hardship. The record contains no country information regarding conditions in Peru. The AAO notes that the financial documentation submitted does not present detailed information about the applicant's spouse's ability to support her family. In addition, the record contains no documentation to support the claims of the applicant's spouse regarding the behavioral problems of her son and how they are affecting her, the only qualifying relative. Furthermore, the most current statement from the applicant's spouse states that she and the children have relocated to Peru to be with the applicant. In this statement she expresses concern over her children's education and medical care and over the family's safety as U.S. citizens living in Peru. She does not submit supporting documentation for these claims regarding country conditions in Peru or express any concern over the family's ability to find employment in Peru. Thus, the current record does not establish that the applicant's inadmissibility to the United States would cause his U.S. citizen spouse to suffer extreme hardship.

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, *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. *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.

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 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.