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U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN FRANCISCO

Date:

AUG 15 2006

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 District Director, San Francisco, California, denied the waiver application and it 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 7, 2004.

The record shows that, on February 26, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco District Office on October 16, 2002. The applicant testified that he had entered the United States without inspection in August 1988. The record reflects that the applicant filed a Form I-485 on November 2, 1998, which was eventually denied and caused the applicant to file the second Form I-485. On May 19, 1999, the applicant was issued advance parole. The applicant left and returned to the United States utilizing the advance parole on June 7, 1999. The applicant also testified that this was his last entry into the United States.

On January 15, 2003, the applicant filed the Form I-601 along with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the district director did not consider the applicant's spouse's emotional dependence on the applicant and her continuing recovery from an abusive relationship in determining whether she would suffer extreme hardship. *Applicant's Brief*, dated August 20, 2004. In support of these assertions, counsel submitted the above-referenced brief, a letter from the applicant's spouse's psychologist, and medical documentation for the applicant's spouse. The entire record was reviewed and considered in rendering a decision in this case.

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.

The district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. Counsel does not contest the district director's determination of inadmissibility.

Counsel asserts on appeal, that pursuant to a November 26, 1997, Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) memorandum, the granting of advanced parole by the Service meant that the Service had determined that the applicant would likely qualify for a waiver of his inadmissibility.

The AAO finds that the November 26, 1997, Memorandum, "Advance Parole for Aliens Unlawfully Present in the United States for More than 180 Days," by Paul Virtue, Acting Executive Associate Commissioner (Memo) referred to by counsel, made clear that a Service grant of advance parole status did not confer any waiver of inadmissibility benefits upon the alien. The memo further clarified that an alien who became inadmissible due to his or her departure from the United States had to file the Form I-601, and upon adjudication of that waiver, had to establish extreme hardship to a qualifying relative, in accordance with applicable legal standards.

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 deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

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 at 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 alien 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. The BIA has held:

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 record reflects that the applicant's spouse, [REDACTED] is a native of Peru who became a lawful permanent resident in 1982 and a naturalized U.S. citizen in 1990. The applicant's mother, [REDACTED] is a native of Peru who became a lawful permanent resident in 1992. The applicant and [REDACTED] do not have any children together. [REDACTED] has an adult daughter from a previous relationship. The record reflects further that the applicant and [REDACTED] are in their 40's, [REDACTED] is in her 70's, [REDACTED] may have some health concerns.

Counsel and the applicant do not assert [REDACTED] the applicant's mother, would suffer extreme hardship if she were to remain in the United States without the applicant or return to Peru with the applicant. The AAO is, therefore, unable to find that [REDACTED] would experience hardship should she remain in the United States or return with the applicant to Peru.

Counsel contends [REDACTED] the applicant's spouse, would suffer extreme hardship if she were to remain in the United States without the applicant because she is financially dependent upon the applicant due to a medical condition and she is emotionally dependent on the applicant due to her recovery from an abusive relationship. [REDACTED] in her affidavit, states that the applicant was the one person who gave her the strength to realize that she could leave her abusive relationship, a relationship that caused her to fall into such depression that she almost killed herself and required psychiatric care. [REDACTED] states that she has again fallen into a great depression due to the denial of the applicant's waiver for which she receives bi-monthly counseling. [REDACTED] states that she is physically disabled due to tendonitis brought on by her work and she is now completely dependent on the applicant for income and medical insurance.

Financial records indicate that [REDACTED] has contributed substantially to the household income. In 2001, [REDACTED] contributed \$36,187 to household income. Moreover, it appears that [REDACTED] has family members in the United States, such as her daughter and parents, who may be able to provide financial support in the absence of the applicant. The record shows that, even without assistance from family members, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>.

There is medical documentation in the record indicating that a physician has treated [REDACTED] for tendonitis. The medical documentation indicates that, on February 1, 2004, [REDACTED] was cleared to return to work after being diagnosed with tendonitis. The medical documentation indicates that [REDACTED] was unable to work due to an illness from September 1, 2004 to December 1, 2004. However, the documentation does not indicate

that [REDACTED] was unable to work due to her tendonitis or that she would be unable to recover from whatever illness ailed her during that time period. The medical documentation gives no prognosis [REDACTED] and does not indicate that she requires assistance with daily activities due to her illness or is physically incapable of resuming her employment or finding alternative employment. [REDACTED] affidavit, there is no evidence to suggest that she requires the financial support of her spouse because her earning capabilities are diminished due to her tendonitis.

[REDACTED] indicated in her affidavit that she is currently receiving bi-monthly counseling from [REDACTED] her recurrent depression. A letter from [REDACTED] experiencing a recurrence of major depressive disorder, severe, due to the possible removal of the applicant and that her history of an abusive relationship may leave her vulnerable to catastrophic consequences if the applicant is removed from the United States. However, the letter indicates that these statements were based on only two meetings with the applicant and there is no indication that the applicant received prior psychiatric assistance or that her current situation requires further treatment. The report can, therefore, be given little weight. [REDACTED] and her daughter's affidavits, there is no evidence in the record to confirm that [REDACTED] has been in an abusive relationship, attempted to take her own life or received treatment for a depressive disorder. There is no evidence in the record to suggest [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. The record indicates [REDACTED] has family members, such as her daughter and parents, in the United States, who may be able to assist her emotionally in the absence of the applicant.

Counsel contends that [REDACTED] would suffer extreme hardship if she accompanied the applicant to Peru because she would be separated from her family in the United States and she would be unable to pursue her chosen career in Peru. [REDACTED] in her affidavit, states there is nothing left for her in Peru and that she could not leave her daughter and grandchildren in the United States. [REDACTED] in her original affidavit, also stated that during a visit to Peru, when she inquired into employment opportunities for women in her chosen career, she was informed there were none. There is no evidence in the record to suggest [REDACTED] suffers from a physical or mental illness for which she would be unable to receive treatment in Peru. Moreover, counsel's assertion that [REDACTED] would be unable to pursue her chosen career in Peru contradicts his assertion that she is disabled and unable to support herself without the applicant's financial support. There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness, which would prevent her from performing daily activities or obtaining employment in Peru. There is no evidence in the record to suggest that the applicant [REDACTED] would be unable to find *any* employment in Peru. The record indicates that [REDACTED] and the applicant have some family members, such as siblings, in Peru, who may be able to assist them financially, physically and emotionally. Moreover, while the hardships [REDACTED] faces are unfortunate, the hardships she faces with regard to adjusting to a lower standard of living and separation from friends and family, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as a citizen of the United States, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, she would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused

admission. Rather, the record demonstrates [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.