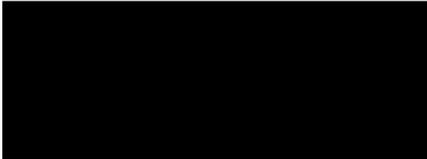


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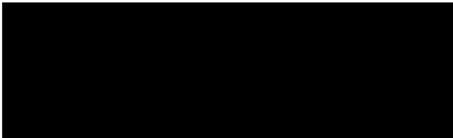
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APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Jacksonville, Florida. 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. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen wife.

The officer in charge found that, based on the evidence in the record, the applicant failed to establish that a qualifying relative would experience extreme hardship should the applicant be prohibited from remaining in the United States. The application was denied accordingly. *Decision of the Officer in Charge*, dated September 29, 2005.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, submitted November 1, 2005. Counsel contends that the officer in charge failed to consider all of the evidence in the record. *Id.* at 3-6.

The record contains a brief from counsel; statements from the applicant; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate; copies of the applicant's and his wife's driver's licenses; a statement from the applicant's wife; a statement from the applicant's mother-in-law; a statement from the applicant's brother-in-law; statements from two of the applicant's friends; a statement from the applicant's cousin; letters verifying the applicant's and his wife's employment; a copy of a lease for an apartment for the applicant and his wife; copies of bills for the applicant and his wife; copies of bank statements for the applicant and his wife; a copy of the applicant's birth certificate; a copy of the applicant's B visa and Form I-94, Departure Record; copies of tax documents for the applicant and his wife; copies of pay stubs, and; copies of flight itineraries for the applicant and his wife. 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 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 as a B-2 visitor for pleasure on March 7, 2001, with authorization to remain for six months. He departed the United States on October 12, 2003, over two years after his B-2 status expired. On November 18, 2003, the applicant reentered the United States in B-1 status as a visitor for business, with authorization to remain until February 16, 2004. As the applicant accrued over one year of unlawful presence in the United States, and then sought readmission, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. 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.

The applicant asserted that his wife will suffer emotional and economic hardship should he be prohibited from remaining in the United States. *Attachment to Form I-601*, dated September 1, 2005. The applicant provided that his wife will experience difficulty if she relocates to Peru, as she does not speak Spanish, she has always resided in the United States, and her family members are in the United States. *Id.* The applicant stated that his mother-in-law is very ill, and his return to Peru would be fatal for her. *Id.*

The applicant's wife expressed that she is close with the applicant, and that she would relocate to Peru if he does. *Statement from Applicant's Wife*, dated April 22, 2005. The applicant's wife indicated that she will have difficulty residing in Peru. *Id.* at 1. She explained that she is a personal trainer, and the fact that she does not speak Spanish would prohibit her from practicing her profession. *Id.* The applicant's wife stated

that there are no exercise facilities in Peru, and thus she would further have difficulty working in the fitness field. *Id.* She asserted that she would be compelled to work for low wages, which would constitute a significant loss of economic resources. *Id.*

The applicant's wife explained that her family relies in her support and assistance. *Id.* She stated that her mother was diagnosed with colon cancer in approximately 2000, requiring a colostomy, the procedure of a "J-pouch," and other surgeries. *Id.* The applicant's wife provided that she takes her mother to visit a hospital every other month, and she and the applicant assist her mother in maintaining a household. *Id.* The applicant's wife indicated that her mother requires oxygen apparatus in her home which occupies the applicant's wife's former room, thus the applicant's wife would have no place to stay with her mother. *Id.* The applicant's wife stated that she and the applicant assist her mother financially, and that they give her mother money when she is too sick to work. *Id.*

The applicant's wife further stated that she assists her brother, [REDACTED] with child care on Friday and Saturday nights. *Id.* She indicated that she acts as a "second mom" to her 15-year-old brother, Markey, ensuring that he goes to school and has a lunch. *Id.*

The applicant's wife expressed concern regarding her safety in Peru. *Id.* at 2. She stated that there are terrorists organizations operating there, and that she would be a target. *Id.*

The applicant's wife stated that she and the applicant wish to reside in the United States, including having children and purchasing a home, and that she would be unable to fulfill her goals should she relocate to Peru. *Id.*

The applicant's mother-in-law reiterated that she is ill, she has undergone a colostomy and J-pouch procedure, she has been diagnosed with type 2 diabetes, and that she has ongoing medical needs with which the applicant's wife helps. *Statement from Applicant's Mother-in-Law*, dated April 20, 2005. She indicated that she is close with the applicant's wife, and that she relies on the applicant's wife's assistance. *Id.* She stated that her husband, the applicant's father-in-law, works as a bartender at nights and sleeps during the day, thus he is unavailable to help her. *Id.* She expressed concern for the applicant's wife's emotional state should she be separated from the applicant. *Id.*

The applicant's brother-in-law, [REDACTED] stated that he relies on the applicant's wife for childcare on Friday and Saturday nights so that he can work. *Statement from Applicant's Brother-in-Law*, dated April 20, 2005. He provided that his son is close with the applicant's wife, and that he and his son would suffer emotional hardship if the applicant's wife departs the United States. *Id.*

The record contains a letter from a friend of the applicant, [REDACTED], in which she expressed her support for the applicant's continued presence in the United States. *Statement from [REDACTED]* dated April 22, 2005. The record contains a letter from another friend of the applicant, [REDACTED] in which he observed that the applicant and his wife are very close emotionally. *Statement from [REDACTED]* dated April 21, 2005. The applicant submitted a letter from his cousin, [REDACTED], in which [REDACTED] stated that the applicant and his wife share common interests and goals, and he voiced his support for the applicant's waiver application. *Statement from [REDACTED]* dated April 20, 2005.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if he is prohibited from remaining in the United States. It is noted that the record contains statements that describe hardships to the applicant's mother-in-law, the applicant's brothers-in-law, and the applicant's nephew (brother-in-law's son) should the waiver application be denied and the applicant's wife depart the United States. However, direct hardship to an applicant's mother-in-law, brothers-in-law, or nephew is not a consideration in waiver proceedings under Section 212(a)(9)(B)(v) of the Act. Yet, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members.

Counsel, the applicant, the applicant's wife, and the applicant's mother-in-law each discuss the applicant's mother-in-law's serious health problems, medical procedures she has undergone, and the fact that the applicant and the applicant's wife provide assistance for her. However, the applicant has not provided any medical records for his mother-in-law that would support that she is ill and requires ongoing medical care and assistance in her home. In light of the referenced hospital stays, multiple surgeries, and periodic return visits to medical facilities, it is evident that extensive medical records should be available. The brief statements in the record are not deemed sufficient evidence to show by a preponderance of the evidence that the applicant's mother-in-law suffers from the claimed conditions.

Further, the applicant has not established that his mother-in-law requires the assistance of his wife. The record reflects that the applicant's mother-in-law resides with her husband, and she has an adult son who lives nearby. Thus, the applicant's mother-in-law has at least two other immediate relatives who may assist her. The applicant has not indicated whether his mother-in-law has other children or relatives who are available to assist her if needed. As the applicant's mother-in-law engages in employment, it is evident that she does not require full-time care, and she has at least some capability to meet her needs.

The applicant's wife and brother-in-law explained that the applicant's wife provides childcare for the applicant's nephew on weekends so that the applicant's brother-in-law may work. The applicant's brother-in-law indicated that he lacks adequate economic resources to hire someone to meet this need. However, while the applicant's brother-in-law indicated that he is a single father, he did not provide whether his son's mother is available to care for him, or whether he has other siblings or relatives who may assist him with childcare. The record contains no documentation to reflect the applicant's brother-in-law's financial resources to show his means. Thus, the applicant has not shown that his brother-in-law in fact relies on the applicant's wife for childcare services.

While the record does not support that the applicant's family members depend on the applicant's wife's assistance by necessity, the AAO acknowledges that the applicant's wife would experience emotional hardship if she departs the United States and is no longer able to directly support her family members.

The applicant's wife indicated that she would experience economic hardship if the applicant departs the United States. She stated that she would be unable to meet her financial goals in the United States such as buying a home should she remain without the applicant. She asserted that she would be unable to secure employment in her field in Peru should she relocate with the applicant, as she does not speak Spanish and there is a lack of exercise facilities where she could work. However, the applicant has not provided sufficient

documentation to support that his wife would suffer unusual economic detriment should he be prohibited from remaining in the United States. The record lacks adequate documentation to show the applicant's wife's current expenses, such that the AAO can assess her financial situation should she remain in the United States without the applicant. Though the applicant's wife indicated that she wishes to purchase a home, the record does not reflect that she currently has responsibility for a mortgage or that she incurs unusual housing or living expenses. Nor has the applicant provided documentation to support that his wife would be unable to work as a personal fitness trainer in Peru. The applicant has provided no evidence that Lima, a large capital of a country of over 28 million people, would have no opportunities for an English-speaking fitness trainer. See *CIA World Factbook*, Peru, <<https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html>> (visited August 9, 2007). It is understood that the applicant's wife would incur costs of relocating to Peru, including a loss of income while she and the applicant sought new employment. However, these costs consist of ordinary expenses expected when one relocates to a new city or country. The applicant has not established that, should the present waiver application be denied, his wife would experience economic consequences that are unusual or rise to the level of extreme hardship.

Counsel and the applicant's wife refer to conditions in Peru, specifically harms targeting Americans. However, though the applicant's wife quoted a report, she did not identify the report or provide a copy. The applicant has submitted no documentation to establish that his wife would be targeted for harms in Peru. The U.S. Department of State reported that the terrorist group Sendero Luminoso, mentioned by the applicant's wife, targets indigenous people and commits "the vast majority of . . . [their harms] in Junin, Huanuco, and Ayacucho, rural areas that historically suffered from Sendero Luminoso's violence." *U.S. Department of State Country Reports on Human Rights Practices, Peru* (March 6, 2007); *U.S. Department of State Country Reports on Human Rights Practices, Peru* (February 28, 2005). The U.S. Department of State further reported that the Peruvian government has ongoing measures to combat terrorists and prosecute offenders, including members of MRTA and Sendero Luminoso. *Id.* The applicant has not shown that his wife would reside in a rural area of Peru that experiences significant harms from terrorist groups, or that she would be otherwise targeted as a foreigner.

The AAO recognizes that the applicant's wife would endure emotional consequences, and some economic detriment, as a result of separation from the applicant should she remain in the United States. The AAO further acknowledges that the applicant's wife would experience emotional hardship and financial challenges due to relocating to Peru and leaving her family members in the United States. However, the applicant has not shown that his wife would suffer consequences that are sufficiently different or more severe than those commonly experienced by families who are separated 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, *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.

All instances of hardship to the applicant's wife have been considered separately, and in aggregate. Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife should he be prohibited from remaining in the United States will 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.