



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: LIMA, PERU Date: MAR 04 2008

IN RE: Applicant: [Redacted]

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:

[Redacted]

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 Officer in Charge, Lima, Peru, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 41-year-old native and citizen of Peru who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record reflects that the applicant's spouse, [REDACTED], is a U.S. citizen born in New Jersey in 1960. The applicant was admitted as a visitor to the United States in 1994. She subsequently applied for asylum, but her application was denied. The applicant was ordered deported, and her appeal to the Board of Immigration Appeals was dismissed. The applicant remained in the United States without authorization for a period exceeding one year. She was removed from the United States in 2004, and currently resides in Lima, Peru with the couple's two children. The applicant seeks a waiver of inadmissibility in order to return to the United States.¹

The officer in charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The officer in charge denied her application for a waiver of inadmissibility, finding that she had failed to establish that her U.S. citizen spouse would face extreme hardship.

On appeal, the applicant, through counsel, submits a brief and additional documentary evidence. The applicant contends that her unlawful presence in the United States was due to ineffective assistance of counsel, and should therefore be excused. The applicant further claims that her spouse faces extreme hardship, as evidenced by his high level of anxiety and stress.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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

¹ The record reflects that the applicant has also submitted a Form I-212, Permission to Reapply for Admission after Removal. That application is not currently before the AAO on appeal. The AAO notes nevertheless that, under *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), an application for permission to reapply for admission is to be denied, in the exercise of discretion, when an alien is mandatorily inadmissible to the United States under another section of the Act, and when no purpose would be served in granting the application.

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 officer in charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The record reflects, and the applicant admits, that she was admitted to the United States as a visitor in 1994. The applicant subsequently applied for asylum, but her application was denied and she was referred to an Immigration Judge. The Immigration Judge ordered voluntary departure, and the applicant appealed the order to the Board of Immigration Appeals. Unbeknownst to her, the Board of Immigration Appeals dismissed her appeal. The applicant did not depart the United States. In 2004, she was apprehended and removed from the United States. The applicant claims that her unlawful presence in the United States was due to the ineffective assistance of her former counsel. The record includes evidence that her former counsel has been disbarred. While the AAO recognizes that the applicant may have relied on the advice of unscrupulous counsel, the statute does not provide for an ineffective assistance of counsel waiver to unlawful presence. The AAO therefore affirms the finding of inadmissibility and finds that the applicant is inadmissible as charged. The question remains whether the applicant is eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's U.S. citizen children is also not a permissible consideration under the statute.

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 alien has established extreme hardship to a qualifying relative. 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).

The applicant's husband, [REDACTED] is a 47-year-old native-born U.S. citizen. He was married to the applicant on November 18, 2000 in Florida. The applicant's husband served in the U.S. Armed Forces for 10 years. The couple has two children, who reside in Peru with the applicant. The applicant's husband has traveled to visit them in Peru. The applicant states that they have had to sell their home, and that her husband must work additional hours to cover the expenses of supporting the family and traveling to Peru. The applicant's husband suffers from a high level of anxiety and stress, which has resulted in several visits to the emergency room. See Applicant's Memorandum in Support of 601 Inadmissibility Waiver and I-212 Waiver of Previous Removal.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's husband rises to the level of extreme. The AAO notes that the record does not contain a statement by the applicant's husband himself. The evidence submitted includes medical records, home sale records, the applicant's husband's psychological evaluation, birth, marriage and divorce records, and records relating to the applicant's former counsel's disciplinary proceedings. The record also includes some financial documentation, and evidence of the applicant's husband's trips and telephone calls to Peru.

The record suggests that the applicant's husband is reluctant to relocate to Peru. As a U.S. citizen, he is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's husband's concerns in this regard are in any event common to other individuals facing similar circumstances, and do not rise to the level of "extreme hardship." See *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The AAO has considered the applicant's husband's hardship due to his separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. See *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not

enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). Although the AAO acknowledges the applicant's husband's mental health condition and his claims that he would experience hardship if he continues to be separated from his wife, the AAO finds that his hardship is typical for any person in his circumstances and does not rise to the level of "extreme" as required by the statute.

The AAO has evaluated the applicant's husband's hardship claims individually and in the aggregate. The AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.