U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

FILE: Office: LIMA, PERU Date:

IN RE: Applicant:

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

Robert P. Wiemann, Director
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 record reflects that the applicant is a native and citizen of Peru. The applicant is the spouse of a U.S. citizen and the beneficiary of a petition for alien relative. The applicant was found inadmissible to the United States pursuant to §§ 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(II). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant's husband contends that he is suffering extreme physical, emotional, and financial consequences due to the applicant's inadmissibility. On appeal, the applicant submits medical information regarding the applicant's husband's physical condition. The entire record was reviewed in rendering this decision, and the AAO concurs with the district director's finding that the applicant has failed to establish that her husband will suffer extreme hardship if she is not allowed to enter the United States.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The officer in charge based the finding of inadmissibility under this section on a finding that the applicant had procured a counterfeit alien registration card in order to work for the Disney corporation in Orlando, Florida. The record contains no statements, admissions, or documentary evidence in support of this finding, and the AAO notes that the applicant denies this determination. Because the record does not establish that the applicant procured false documentation or used that documentation to procure any benefit under the Act, the AAO finds that the grounds of inadmissibility described at § 212(a)(6)(C)(i) of the Act do not apply to the instant case.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> (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.
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> . . . .
>
> (v) Waiver. – The Attorney General [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.

Hardship to the alien herself is not a permissible consideration under the statute. The above-described waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The record reflects that the applicant entered the United States as a nonimmigrant tourist in August 2000 and remained until June 2003. It does not appear that the applicant requested any visa extension or change of status. The applicant was, therefore, unlawfully present in the United States over one year. She now seeks readmission prior to ten years from her June 2003 departure.

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 pursuant to § 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 in the instant case indicates that the applicant's husband suffers from chronic back pain and high blood pressure. The applicant's husband writes in a letter submitted with the I-601 application that he is in constant pain, and that the applicant has assisted him in remaining flexible and functional by massaging his back. The applicant submits documentation establishing that her husband must observe certain work restrictions, such as limitations on how much he is allowed to lift and how long he may stand. The medical evidence also establishes that the applicant's husband takes numerous medications. The medical documentation submitted does not establish that the applicant's husband requires assistance to carry out his daily activities, such that the applicant's absence renders him unable to work or care for himself.

The applicant's husband also expresses concern regarding his difficulty in supporting the applicant while she is in Peru. He states that he cannot afford all the medical treatment he requires due to the added expense involved in supporting a second dwelling for the applicant. There is no evidence on the record, however, regarding the applicant's husband's financial status. The applicant has not established that her husband is unable to meet or alter his current expenses, or that her inadmissibility causes him extreme financial 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).

On appeal, the applicant's husband writes that he lived with the applicant for fourteen months in her native Peru, and he felt his safety was threatened due to his U.S. nationality. The applicant's husband states that he must work in dangerous locations in Peru, which causes him emotional and potential physical hardship. In her statement submitted with the application for the waiver, the applicant also wrote that Peru is chaotic and dangerous. The record, however, contains no independent documentation supporting a claim that the applicant's husband is in particular danger in Peru on account of his nationality. There is also no evidence on the record to establish that the applicant's husband would be unable to obtain necessary medical treatment in Peru. In sum the record does not establish that the applicant's husband would suffer extreme hardship should he choose to accompany the applicant to Peru.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but typical difficulties arising whenever a spouse is removed from the United States. Although the depth of concern regarding the applicant's immigration status is neither doubted nor minimized, it is clear that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in 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 exists. The law 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her husband as required under INA § 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B). In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) 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.