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Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES (SANTA ANA), CALIFORNIA Date: SEP 21 2009

IN RE: [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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Elena C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 32-year-old 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. The applicant is married to a U.S. citizen, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife in the United States.

The District Director found that the applicant failed to establish extreme hardship to his citizen spouse, and denied the application accordingly. *Decision of the District Director,* dated Nov. 21, 2006. On appeal, the applicant's spouse asserts that she will suffer extreme hardship if her husband is denied a waiver. *See Form I-290B Notice of Appeal*, dated Dec. 21, 2006; *Letter from* [redacted] dated Dec. 19, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on August 31, 2003, in California; letters from the applicant's spouse; medical records for the applicant's spouse; a letter from the applicant's mother-in-law; a medical report for the applicant's mother-in-law; financial documents for the couple; evidence of the applicant's health insurance; and photographs of the couple. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides:

> (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 [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.

8 U.S.C. § 1182(a)(9)(B). The record shows that the applicant entered the United States on March 16, 1989, with a B-2 visa valid until September 15, 1989. *See Form 1-94 for* [redacted] *Decision of the District Director, supra.* The applicant's spouse, [redacted], filed Form I-130, Petition for Alien Relative, and Form I-485, Application to Register Permanent Residence, on March 31, 2006. *See Form 1-130, Petition for Alien Relative, supra; Form I-485, Application to Register Permanent Residence, supra.* On June 20, 2006, USCIS approved the applicant's Form I-512 Application for Advance Parole. *See Form I-512, Authorization for Parole of an Alien into the United States.* On July 10, 2006, the applicant was paroled into the United States after travel abroad. *See id.* USCIS approved the Petition for Alien Relative on November 20, 2006. *See Form 1-130, Petition for Alien Relative, supra.*

The applicant began to accrue unlawful presence on April 1, 1997. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006) (holding that presence in the United States before April 1, 1997, is not considered "unlawful presence" under section 212(a)(9)(B) of the Act). Unlawful presence continued to accrue until his application to adjust status was filed on March 31, 2006, a period in excess of one year. The applicant's unlawful presence for one year or more and departure from the United States in 2006 triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See id.* at 909.[1]

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant himself, or to his children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-*

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[1] The record shows that the applicant was convicted of a misdemeanor violation of California Penal Code section 148.9 (falsely representing himself as another to a police officer) on June 11, 1998. This conviction does not render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act because it does not constitute a crime involving moral turpitude. *See Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008) (holding that the crime of false identification to a peace officer is not categorically a crime involving moral turpitude because it does not require fraudulent intent under California law).

Gonzalez, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant's spouse is a 30-year-old native and citizen of the United States. The applicant and his wife have been married for six years. *See Marriage Certificate*. The applicant's spouse asserts that she will suffer extreme psychological, medical, and financial hardships as a result of the separation from her husband.

In support of the psychological hardship claim, the applicant's wife states that she "has been in love

with him as [her] best friend and husband for all of [her] adult life and cannot begin to describe the **pain, loss and psychological distress** [she] would experience if he were forced to leave the country." *See Letter from* [redacted] *supra.* Mrs. [redacted] states that "[t]he extreme stress and trauma of dealing with the possibility of separation from [her] family or husband has caused [her] to fall into a severe state of depression and anxiety." *Id.* A Licensed Marriage Family Therapist indicates that the applicant's wife has been in counseling since September 18, 2006, and that "[s]he is being treated for anxiety and depression." *See Letter from* [redacted] dated Dec. 17, 2006. The record also contains a prescription for Lexapro and Lunesta. *See Prescription for* [redacted] dated Dec. 11, 2006.

In support of the medical hardship claim, the applicant's wife states the she has "several medical conditions that need [her] husband's immediate and constant care." *See Letter from* [redacted] *supra.* Specifically, she has been diagnosed with Pervasive Fibrocystic Breast Disease. *Id.* The record contains evidence of [redacted] surgeries in 2000 and 2003. *See Medical Records for* [redacted]. Additionally, the applicant provides medical insurance for his wife through his employment. *See Documentation from Tribune* (noting [redacted] as a spouse dependent).

Finally, the applicant's spouse contends that the denial of the waiver will cause extreme financial hardship. The record reflects a mortgage with a balance of $561,000, two auto loans, and additional debt of $26,545.00. *See Letter from* [redacted] *supra*; *Financial Documents*. Mrs. [redacted] fears that the applicant's removal would force her to default on most of her financial obligations, and to sell the couple's home. *See Letter from* [redacted] *supra.*

Although the record suggests that family separation would cause various hardships to the applicant's spouse, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. For instance, the brief letter from [redacted] therapist fails to indicate the severity or causes of her anxiety and depression. Additionally, the record does not contain any information regarding her future prognosis. The emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, *supra*. Regarding medical hardship, the medical records show that [redacted]'s last surgery occurred in 2003, three years before the filing of this appeal. Additionally, the record does not show her need for continuing care, or a guarded medical prognosis. While not insignificant, the applicant's medical condition does not appear to be of such severity that the denial of the waiver would cause extreme hardship. Further, the record is silent regarding whether the applicant's wife could obtain health coverage through her own employment. Finally, the evidence regarding the couple's financial situation is insufficient to show that the denial of the waiver would result in extreme hardship. Although the couple had unsecured debts of over $25,000 in 2006, the record shows that they had a joint income of $67,994 in 2005, *see IRS Form 1040* (2005), and that [redacted] contributed at least $40,000 to the family income, *see Form I-864, Affidavit of Support*. Because the applicant's spouse appears to be the primary wage earner, the denial of the waiver would not rise to the level of extreme financial

hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship).

Regarding potential relocation to Peru, the applicant's wife states that relocation would cause extreme hardship. The record reflects that the applicant's spouse was born in the United States, she has lived in California all of her life, and she states that all of her family and friends are in the United States. Additionally, [redacted]s mother and grandfather reside near her, and they rely on Mrs. [redacted] and the applicant during periods of incapacitation. *See Report of Health Issues of* [redacted] dated Dec. 13, 2006; ***Letter from*** [redacted], dated Dec. 11, 2006. Further, [redacted] states that she does not have "verbal or written skills in the Spanish language," and she fears that she would be "unable to adjust to life in a third world country." *See Letter from* [redacted] *supra.* Finally, [redacted] also states that she is planning to return to school to pursue a Master's Degree, which would not be possible for her in Peru. *See id.*

Given the applicant's wife's equities in the United States, it appears that relocation to Peru to live with the applicant could impose adjustment difficulties. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996). Additionally, the hardships that would be faced by the applicant's mother-in-law and [redacted] are not calculated in the extreme hardship analysis. *See* 8 U.S.C. § 1182(a)(9)(B)(v) (considering hardship to an applicant's spouse or parents). Finally, there is no documentary evidence in the record regarding country conditions in Peru to support the fears of inadequate employment, medical care, or opportunities for advanced education. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof).

In sum, although the applicant's spouse has presented some evidence of harm based on family separation or relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch,* 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

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 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.