U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

FILE: [redacted] Office: LIMA, PERU Date: AUG 10 2005

IN RE: [redacted]

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:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. A motion to reopen was dismissed and the order dismissing the appeal was affirmed. The matter is now before the AAO on another motion to reopen. The motion will be granted and the previous decisions of the Officer in Charge and the AAO will be affirmed.

The applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States for having been unlawfully present in the United States for more than one year. 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), the applicant is inadmissible to the United States for a period of 10 years since his last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse under section 212(a)(9)(B)(v) of the Act. The application was denied accordingly. *Decision of the Officer in Charge,* dated August 1, 2000.

On motion, counsel submits a statement from a social worker regarding her background and asserts that her previously submitted affidavit in conjunction with the balance of the record establishes extreme hardship to the applicant's spouse. *See Attorney Brief*, at 1-2, dated September 25, 2003.

The record includes, but is not limited to, the aforementioned documents, employer letters, wedding photographs, evidence of expenses and travel to Bolivia, medical records, medical doctor's letter and a psychological evaluation. The entire record was reviewed and considered in rendering a decision on the motion.

The record reflects that the applicant was present in the United States without valid legal status from 1993 until his departure on June 29, 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 29, 2000, the date of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(i)(II) 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.

The relevant waiver provision is located in section 212(a)(9)(B)(v) of the Act.

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

> (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.

Counsel submits a statement from a social worker regarding her background and asserts that her previously submitted affidavit in conjunction with the balance of the record establishes extreme hardship. *Attorney Brief*, at 1-2. Counsel states that the AAO decision of August 29, 2003, which determined that the social worker's statement lacked probative value, is based on racial hostility. *Id.* at 2. The AAO finds this assertion baseless and inaccurate. The AAO decision focused on the qualifications of the social worker and made an objective determination that the statement lacked probative value. Counsel has remedied the AAO concerns through submission of the social worker's statement on her background. Counsel contends that the AAO decision on the motion to reopen does not correctly address a letter submitted by a medical doctor which states that family separation has caused the applicant's spouse extreme hardship. *Id.* at 1. The AAO notes that this letter does not indicate a doctor-patient relationship between the applicant's spouse and the doctor, rather it is equivalent to a support letter from a friend. Nonetheless, the AAO will reassess the merits of this case based on the newly submitted evidence.

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 are applicable to section 212(a)(9)(B)(v) waiver proceedings and include the presence of lawful permanent resident or United States citizen family ties to 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The record does not specify the presence of lawful permanent resident or United States citizen family ties to this country for the applicant's spouse nor does it specify whether she has family ties outside the United States. The social worker's letter cites the 2001 Department of State Country Reports for Bolivia which discusses the high level of poverty in Bolivia. *Statement of Social Worker*, at 6, dated November 14, 2002. The letter also cites passages dealing with high levels of domestic violence, prostitution and gender discrimination. *Id.* The AAO will disregard

the cited passages dealing with children as they are not qualifying relatives for extreme hardship purposes. The record does not indicate the current nature of the applicant's spouse's ties to Bolivia, if applicable. In regard to the financial impact of departure, the record indicates that the applicant's spouse is working full-time as a stylist. *Letter from Ratner Companies*, dated November 7, 2002. There is no indication of her rate of pay. The record indicates that the applicant's spouse is paying a mortgage. *Disclosure Statement*, dated July 22, 1999. The record includes passport stamps and travel itinerary for the applicant's spouse as evidence of financial expenditures related to visiting the applicant.

The psychologist's letter states that the applicant's spouse is depressed and the depression was triggered by the applicant's visa denial. *Psychologist's Letter*, at 6, dated September 12, 2000. The letter states that the applicant's spouse is in need of psychiatric treatment and that her doctor prescribed antidepressant medication to alleviate her depression. *Id.* at 1,6. The record does not include any evidence from a medical doctor that she is receiving treatment or medication for depression or that this treatment is unavailable in Bolivia. Medical records are submitted which appear to be related to infertility treatment for the applicant's spouse. *See Medical Records*, various dates. The record does not include evidence that this treatment is unavailable in Bolivia. The social worker's letter details the economic and emotional impact of separation from the applicant, however, there does not appear to be an ongoing relationship between the applicant's spouse and the social worker.

The record reflects that the applicant's spouse would face emotional and financial hardship based on separation from the applicant, however, the record does not establish extreme hardship to the applicant's spouse in the event that the applicant is refused admission to the United States. Extreme hardship must be shown to the applicant's spouse if she relocates to the Bolivia or if she remains in the United States, as there is no requirement to reside outside of the United States as a result of denial of the applicant's waiver request

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 previous decisions of the Officer in Charge and the AAO will be affirmed.

ORDER: The appeal is dismissed.