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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: LIMA Date: DEC 2 6 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Lima, Peru, denied the waiver application, and it 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. § 212(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 is the spouse of a lawful permanent resident and the father of a U.S. citizen adult son. He 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 with his spouse and son.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 24, 2005.

The record reflects that, on April 27, 2000, the applicant was admitted to the United States as a B-2 nonimmigrant visitor. The applicant remained in the United States past his authorized stay, which expired on October 26, 2000. The record reflects that the applicant returned to Peru on December 16, 2001. On January 30, 2002, the applicant's adult U.S. citizen son filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The Form I-130 was approved on September 10, 2003.

On December 20, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that he has evidence from doctors and hospitals which states that he requires the care of his family due to the illnesses he suffers. *See Form I-290B* dated June 6, 2005. In support of these assertions, the applicant submitted only the Form I-290B. The Form I-290B indicated that the applicant would submit a separate brief or evidence on appeal within 45 days. At no time did the applicant forward a brief and/or additional evidence to support the appeal. The record is, therefore, considered complete. The entire record was reviewed and considered in rendering a decision in this case.

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.

The officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission of unlawful presence in the United States. The applicant does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) 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. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing section 212(a)(9)(B)(v) extreme hardship. Therefore, hardship to the applicant's children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 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).

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 reflects that the applicant's spouse, [redacted] is a native and citizen of Peru who became a lawful permanent resident in 2004. The applicant and his spouse have a 36-year old son who is a native of Peru who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2001. The applicant and his spouse have a 31-year old daughter who is a native and citizen of Peru who was granted asylee status in 2001. The applicant and his spouse also have a 38-year old son who is a native and citizen of Peru who does not have any status in the United States. The applicant and [redacted] are in their 60's and there is no evidence that [redacted] has any health concerns.

The applicant, on Form I-290B, asserts that he requires his family's assistance because he suffers from illnesses. [redacted], in her affidavit, states she would suffer hardship if she were to remain in the United States without the applicant because she is sad and concerned about the fact the applicant is going through hard times in Peru, and that she, her children and their grandchildren miss him very much. She states that she needs her husband with her and that they have both been preoccupied, worried, anxious and literally sick of wondering whether the applicant will be allowed to travel to the United States. She states that she has had a lack of appetite and sickness in her stomach from the stress and that the applicant needs her to take care of him because of his high blood pressure.

There is no evidence in the record to indicate that [redacted] is unable to support herself either through her own employment or with funds provided to her by her children. The record reflects that the applicant is a retired police officer who receives a pension and also income from a business he owns, indicating that Ms. [redacted] does not have any additional financial obligations in regard to supporting the applicant financially. There is no evidence in the record to confirm that [redacted] is unable to perform daily activities or work duties due to any illness. The record does not support a finding of financial loss that would result in an extreme hardship to [redacted], even when combined with the emotional hardship described below.

There is no evidence in the record to confirm that [redacted] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation or that would be exacerbated by the applicant's absence. There is no evidence in the record to confirm that the applicant suffers from a physical or mental illness for which he requires [redacted] assistance. While it is unfortunate that [redacted] may be affected emotionally by the separation from the applicant or his loneliness from being separated from his family, this is hardship that is commonly suffered by aliens and families upon deportation. Additionally, it appears that [redacted] has other family members in the United States, such as her two adult children, who may be able to assist her financially, physically and emotionally in the absence of the applicant. Finally, it appears that the applicant has other family members in Peru, such as his eldest adult son, who may be able to assist him financially, physically and emotionally, which would ease [redacted] concerns.

The applicant and [redacted] do not assert that [redacted] would suffer hardship if she returned to Peru. The AAO is, therefore, unable to find that [redacted] would experience extreme hardship should she choose to join the applicant in Peru. Additionally, the AAO notes that, as a lawful permanent resident, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] would not experience extreme hardship if she remained in the United States without the applicant.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, 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). 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.