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

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HB

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAY 26 2006

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:

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 waiver application was denied by the Acting Officer-in-Charge, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated June 30, 2004.

On appeal, the applicant's spouse asserts that the denial of her husband's application is a violation of her first amendment rights and that the denial causes her extreme hardship as it denies her the opportunity to live and work in the United States.

The AAO notes that Constitutional issues are not within the appellate jurisdiction of the AAO, therefore the assertion regarding the applicant's spouse's first amendment rights will not be addressed in the present decision.

The record includes, but is not limited to, a letter from the Assemblies of God of Bolivia, a certificate of gratitude to the applicant from the Flushing Baptist Church, compact discs containing religious recordings, and various documents in Spanish without English translations. The entire record was reviewed and considered in rendering a decision on appeal except for the documents in Spanish without English translations, as the applicant is required to provide English translations for all foreign language documents submitted. *See* 8 C.F.R. §103.2(b)(3).

In the present application, the record indicates that the applicant entered the United States with a non-immigrant tourist visa in September 1999 with an authorized stay of six months. The applicant remained in the United States until December 2002, when the applicant was deported. Therefore, the applicant accrued unlawful presence from March 2000, the end of his authorized six-month stay, until December 2002, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his December 2002 departure from the United States. Therefore, the applicant is 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) 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Bolivia or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Bolivia. The record indicates that the applicant's spouse has lived most of her adult life in Bolivia and that she currently resides there with her husband. The applicant submitted no evidence to show that his wife is currently suffering extreme hardship as a result of living in Bolivia. The applicant's spouse states in the appeal that she suffers extreme hardship as a result of being denied the opportunity to live and work in the United States. The AAO notes that the applicant's spouse, as a U.S. citizen is free to live and work the United States. The AAO also notes that relocation to a foreign country generally involves some inherent difficulties, however, the record does not reflect that the applicant's spouse is currently suffering extreme hardship as a result of her relocation

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse resides in the United States, separated from the applicant. The applicant submitted no evidence to establish that his spouse would suffer extreme hardship as a result of residing in the United States without the applicant.

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 deported. .

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 appeal will be dismissed.

ORDER: The appeal is dismissed.