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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: DEC 18 2007

IN RE: Applicant: [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 waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, and 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 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 her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen husband, United States citizen stepdaughter, and Peruvian daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated February 15, 2006.

On appeal, the applicant's husband states "[b]ecause the case was not properly presented it was misunderstood. Because [they] didn't show proof of extreme hardship...Please reconsider [his] case because it is affecting physically and emotionally to all [their] family." *Form I-290B*, filed March 13, 2006.

The record includes, but is not limited to, statements from the applicant, the applicant's spouse, stepdaughter, mother-in-law, and father-in-law, and various medical documents pertaining to the applicant and her husband's health. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
>
> ...
>
> (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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen stepdaughter would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's stepdaughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States on a B1/B2 nonimmigrant visa on December 26, 2000. On January 30, 2003, the applicant married Mr. [redacted] Fontora, a naturalized United States citizen, in California. On March 6, 2003, the applicant departed the United States. On February 2, 2004, the applicant's husband filed a Form I-130 on behalf of the applicant, which was approved on July 19, 2004. On August 5, 2005, the applicant filed a Form I-601. On February 15, 2006, the OIC denied the applicant's Form I-601, finding that the applicant had accrued more than 365 days of unlawful presence.

The applicant accrued unlawful presence from June 26, 2001, the date the applicant's authorization to remain in the United States expired, until March 6, 2003, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her March 6, 2003 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

The applicant's husband states to be separated from his "wife would be stressful and a hardship almost impossible to cope with." *Statement from A* [redacted], undated. He states that if he joins the applicant

in Peru, "[his] opportunities of getting a job there are pretty scarce." *Id.* The AAO notes that even though the applicant's husband is not a native of Peru, he speaks Spanish, and it has not been established that the applicant has no family ties to Peru. Additionally, the applicant's husband has an engineering degree, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Peru. The applicant and her husband assert that their two children, from previous marriages, are suffering from the family separation. However, as noted above, the applicant's United States citizen stepdaughter and Peruvian daughter are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. Additionally, the applicant has not demonstrated that her stepdaughter could not join her in Peru. It has not been established that the applicant's stepdaughter would have difficulties rising to the level of extreme hardship in adjusting to the culture of Peru. The applicant's mother-in-law and father-in-law state their son suffers from epilepsy. *See letters from* [redacted] *and* [redacted] undated. The AAO finds that the applicant's husband was diagnosed with a seizure disorder and takes anti-seizure medication daily. *See Lab Order from* [redacted], dated December 5, 2002, and *Prescription receipts from Sav-On Pharmacy.* However, the AAO notes that there was nothing from a doctor indicating exactly what the medical issues are, any prognosis, or what assistance is needed and/or given by the applicant. The AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical condition in Peru. Further, there is no indication that the applicant's husband has to remain in the United States to receive his medical treatments and prescriptions. The AAO notes that documentation was submitted establishing that the applicant was diagnosed with "coriotinopatia serosa central in the left eye...that can drive her to blindness." *Letter from Clinic of Eyes*, dated April 7, 2005. However, the AAO notes that hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Peru.

In addition, the applicant does not establish extreme hardship to her spouse if he remains in the United States, maintaining his employment. The AAO notes that the applicant's stepdaughter will be eighteen years old on March 23, 2008, and therefore, will be an adult, and as a United States citizen, she is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, the applicant's husband, a United States citizen, is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant has been residing in Peru since March 6, 2003, and there is no evidence that the applicant contributes any financial assistance to her husband. Further, beyond generalized assertions regarding country conditions in Peru, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981). Additionally, the AAO notes that the applicant and her husband have been separated since March 2003, and it has not been established that their current separation is causing the applicant's husband hardship beyond that which would normally be expected. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in Peru and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure, and has endured, hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

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 she 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.