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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

H3

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: OCT 09 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v).

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, and 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. She seeks a waiver of inadmissibility pursuant to sections 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 U.S. citizen spouse.

The record reflects that the applicant has testified she entered the United States without inspection on October 29, 2003 and remained in the United States until voluntarily departing in February 2005. The applicant married her spouse, [redacted], a native of Peru who became a naturalized U.S. citizen on October 23, 1996, in the United States on December 27, 2003. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on January 29, 2004. The petition was approved on July 24, 2004. The applicant departed from the United States in February 2005 to apply for an immigrant visa at the U.S. Embassy in Lima, Peru. The applicant filed an Application for Waiver of Grounds of Excludability on June 13, 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly[1]. *Decision of OIC*, dated November 14, 2005.

On appeal, counsel asserts that the applicant did not have representation when filing her waiver application, and requests the AAO to consider new evidence submitted with the appeal. *Brief of Counsel*, dated November 28, 2005. Counsel, in summarizing this evidence, maintains that the applicant's spouse suffers from "extreme anxiety and depression" as a consequence of his separation from the applicant, and that this condition prevented him from adequately explaining the extreme hardship he experiences. *Id.* Counsel asserts that the applicant's spouse also suffers because his daughter has been "acting out" as a consequence of the absence of her stepmother, and is now pregnant and "has left the house" to live with her boyfriend. *Id.* Counsel maintains that the applicant's spouse "is not close to his siblings" and is "essentially alone" without the applicant. *Id.*

The record contains a brief from counsel; a psychological evaluation from [redacted]; declarations from the applicant's spouse dated November 28, 2005 and June 13, 2005 respectively; a declaration from the applicant's stepdaughter; a letter from the applicant written in Spanish; a letter from the applicant's spouse's employer; a letter from the pastor at the church the applicant and her spouse attend in the United States; letters from friends of the applicant and her spouse; school documents for the applicant's

[1] The OIC also stated in his decision that the applicant had 15 days to file an appeal from the decision. However, the regulation at 8 C.F.R. § 103.3(a)(2) provides 30 days for the filing of an appeal to the AAO. The record reflects that the applicant filed the appeal no later than December 6, 2005, less than 30 days after the decision was personally served on the applicant on November 14, 2005. Consequently, the appeal was timely filed and the applicant's so-called "Motion for Late Filing of Applicant's I-601 Appeal Brief" is moot.

stepdaughter; documentation of remittances sent by the applicant's spouse to the applicant in Peru; and family photographs. The entire record has been received in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or
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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.
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> . . . .
>
> (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.

The record reflects that the applicant has testified she entered the United States without inspection on October 29, 2003 and remained in the United States until voluntarily departing in February 2005. The applicant is now seeking admission to the United States. Therefore, the applicant accrued unlawful presence from October 29, 2003 through February 2005, a period in excess of one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her stepdaughter is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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, 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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

> 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).

U.S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse suffers emotionally as a result of separation from the applicant. However, the applicant has submitted insufficient evidence showing that the psychological consequences of separation in this case constitute extreme hardship when considered with other hardship factors, or that the applicant's spouse would suffer extreme hardship if he relocated to Peru to be with the applicant. The hardship described by the applicant's spouse is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly

held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter of [redacted] is based on only a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the current or past disorders suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's spouse asserts in his November 28, 2005 declaration that he is a man of "meager means" and that "money will become very tight" because of his daughter's pregnancy and his need to provide financial assistance to the applicant in Peru. However, there is insufficient evidence showing that the applicant's spouse is experiencing financial hardship beyond that which he would experience if the applicant were present in the United States. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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(i) of the Act, the burden of proving eligibility rests 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.