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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: SEP 20 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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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, pursuant to the record, entered the United States without inspection in September 1995 and did not voluntarily depart until December 28, 2004. The officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B)(i)(II) of the Act, which 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…

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated November 14, 2005.

In support of the appeal, counsel for the applicant has provided the following documents: counsel's brief in support of the appeal; a copy of the applicant's marriage certificate; a copy of the I-130, Petition for Alien Relative, approval notice; the applicant's spouse's daughter's U.S. birth certificate; a letter and a report in regards to the applicant's spouse's daughter's academic progress; employment confirmation letters for the applicant and the applicant's spouse; and photographs of the applicant and his family. The entire record was reviewed and considered in rendering this decision.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

Pursuant to the applicant's spouse's declaration, the applicant has been "...an outstanding father. We share the belief that children need both a strong father figure as well as a strong mother figure in order to instill a balance of principles and lay a foundation for their futures..[redacted]he applicant] ensures that [redacted][the applicant's step-daughter] tends to her studies, but equally important, he is there for her to read a book or to help her ride her bike. With [redacted]s eternally patient and gentle, oftentimes long after my own patience and strength has run out...We are proud of the job we are doing and I am confident that my husband plays a huge role in that accomplishment..." *Letter from* [redacted]

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 his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Although the documentation provided confirms that the applicant has played an important role in his step-daughter's life, counsel has not established that any new arrangements for the applicant's step-daughter's emotional, academic and financial care, were the applicant not permitted to reside in the United States, would cause the applicant's spouse extreme hardship.

The applicant's spouse further states "..[redacted][the applicant] is the primary bread winner in the family, although my contribution makes us more comfortable...Were it not for [redacted]I would be unable to provide for my daughter alone..." *Letter from* [redacted]Counsel further asserts that the loss of the applicant's support in caring for Stephanie, the applicant's step-daughter "...is devastating...There is no way Mrs. [redacted] [the applicant's spouse] could assume that responsibility in his absence..." *Brief in Support,* dated December 13, 2005. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). No objective evidence is provided to establish that the applicant's spouse is unable to assume her own daughter's care without the applicant's assistance.

Finally, the applicant has not provided an explanation for why he is unable to financially assist the applicant's spouse with respect to the maintenance of the U.S. household by obtaining employment in Peru. 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)).

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not

constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, the applicant has not established that the applicant's spouse is suffering extreme financial hardship due to the applicant's absence. 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 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 deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991).

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. In this case, the applicant's spouse states that if she were to relocate to Peru, "...I would have to leave my family in the United States. I have a brother who is a permanent resident. I have worked hard in this country...and I do not want to live in Peru. I am not originally from Peru, I was born in Mexico. I would be forced to live in a strange country with no family ties...The thought of leaving the United States is unbearable and the impact on us all would be horrific..." *Id.* at 2. The applicant's spouse's expressed desire to remain in the United States does not warrant granting a waiver, in the absence of specific facts establishing that relocating abroad will result in extreme hardship to her. The AAO notes that the applicant may reside in Mexico, the applicant's spouse's birth country, or any other country of their choosing; there is no requirement that the applicant reside in Peru. The AAO therefore finds that the applicant has not established that his spouse would face extreme hardship if she were to relocate with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.