U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: Lima, Peru Date: JUL 30 2008

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:

[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, 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 under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States as a B2 visitor for pleasure on July 30, 1993 and later applied for asylum. Her asylum application was denied and she was ordered removed by the immigration judge on October 7, 1998. She remained in the United States until July 20, 2004, when she was removed to Peru. The applicant applied for an immigrant visa and 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 return to the United States and reside with her spouse.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See decision of the Officer-in-Charge* dated February 28, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services ("CIS") erred in failing to consider evidence submitted with the waiver application that establishes that the applicant's husband has been experiencing extreme hardship since the applicant was removed from the United States. Specifically, counsel states that since he was separated from his wife in 2004, the applicant's husband has been treated for anxiety and depression, which has caused him to have suicidal thoughts. Further, the applicant's husband claims that he is experiencing financial hardship due to the loss of the applicant's income. Counsel additionally asserts that the applicant's mother-in-law, who suffers from hypertension and diabetes, is experiencing physical and emotional hardship due to the separation from her daughter-in-law, who resided in the same home and provided her with care and support.

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 –
>
> > (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 Secretary, 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 mother-in-law has suffered since the applicant departed the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver of 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. It is noted that Congress did not include hardship to other family members as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's mother-in-law will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS, supra,* the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's husband if she were denied admission to the United States. The record contains letters from a psychologist and psychiatrist who have treated the applicant's husband for depression, a letter from the applicant's husband's physician, declarations prepared by the applicant and her husband, letters from friends and relatives of the applicant and her husband, a letter from the applicant's former employer in the United States, and a letter from a physician treating the applicant's mother-in-law. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant is a thirty-two year-old native and citizen of Peru. She resided in the United States from 1993 to July 20, 2004, when she was detained by immigration authorities and removed

from the United States. She married her husband, a forty-three year-old native and citizen of the United States, in January 2002, and they resided together in Miami, Florida until the applicant left the United States in 2004. The record further reflects that the applicant's mother-in-law, who suffers from hypertension and diabetes, also resided with them in Miami.

Counsel asserts that since the applicant's removal, her husband has been under psychiatric care for "acute depression and anxiety." *See Counsel's Brief in Support of* Appeal at 2. He states, [redacted] has been treated since May 2004 and kept under observation, as he manifested suicidal tendencies due to the separation from his wife. He has a family history of suicide." *Id.* Counsel maintains that evidence of the applicant's husband's medical condition, including letters from his psychiatrist, psychologist, and physician, was not taken into consideration by CIS when rendering a decision on the waiver application. *Id.* At 2-3. A letter prepared by a psychologist submitted with the waiver application states that the applicant's husband began treatment on May 14, 2004 "to help deal with the anxiety and depression initiated by his wife's arrest and deportation." *Letter from* [redacted] *L.M.H.C.*, dated April 25, 2005. A letter from a psychiatrist further indicates that the applicant's husband suffers from Major Depression Recurrent Severe and Severe Panic and Anxiety Attacks. *See letter from* [redacted] dated September 2, 2004. The letter further states that the applicant has a family history of severe depression and suicide and that the "main reason for his depression has to do with his wife being deported and having complications with the INS." *Id.*

A more recent letter from the treating psychologist submitted with the appeal states,

> I have been treating [redacted] for generalized Anxiety Disorder and Depressive Disorder since May 14, 2004, shortly after his wife's deportation. He was also referred to a psychiatrist, [redacted] . . Both [redacted] and myself were strongly concerned about the possibility of suicide due to [redacted] family history. . . . Fortunately, with both therapy and medication, we have been able to keep [redacted] relatively stable and avoid the horrendous possibility that he may take his own life. *Letter from* [redacted] *L.M.H.C.*, dated March 13, 2006.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letters from the two mental health professionals treating the applicant's spouse indicate that as a result of the applicant's deportation, her husband began experiencing symptoms of severe depression and anxiety and was treated with therapy and medication. The evidence on the record establishes that the applicant's husband's condition is serious and that he would suffer extreme hardship if he continues to be separated from the applicant. In a letter dated September 2, 2004, the applicant's psychiatrist stated that the applicant has a family history of severe depression and relatives who had committed suicide, and that he was also having suicidal thoughts. The applicant's psychologist further stated in a March 2006 letter submitted with the appeal that she and [redacted] had been concerned about the possibility of suicide due to the applicant's husband's family history. It appears that the depression the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Further, in his declaration the applicant's husband states that in addition to the emotional hardship he is experiencing, he is suffering financially because he was unable to work for four

months, and without the applicant's income, he is having difficulty paying unpaid bills and legal fees. *See Declaration of* [redacted] dated November 3, 2005. The applicant further states, "This situation had put a lot of stress on my husband having to deal with our separation, the lost [sic] of income because I am unable to work, not able to pay our bills and additional cost in lawyer fees." *Declaration of* [redacted] dated November 3, 2005.

It appears that in light of his psychological condition and family history of mental illness, the emotional hardship to the applicant's husband resulting from being separated from the applicant, combined with the financial hardship due to the loss of her income, amounts to hardship that is unusual or beyond that which would normally be expected upon deportation or exclusion if he remains in the United States. The applicant made no claim, however, that her husband would experience hardship if he were to relocate with her to Peru. Therefore, the AAO cannot make a determination of whether he would suffer extreme hardship if he moved to Peru.

In this case, the record does not contain sufficient evidence to show that the qualifying relative would suffer hardship if he relocated to Peru that would 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(a)(9)(B)(v) of the Act.

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.