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

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: JUN 09 2008

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 Officer-in-Charge, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer-in-Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer-in-Charge,* dated April 17, 2006.

On appeal, the applicant submits a statement to establish that his qualifying relative would suffer extreme hardship if he were removed from the United States. *Attachment to Form I-290B.*

The record includes, but is not limited to, the previously referenced statement from the applicant; a Peruvian police background certificate for the applicant; a statement from the applicant's spouse; medical records for the applicant's spouse; a Report of Law Enforcement Officer Initiating Involuntary Examination, State of Florida, dated April 6, 1999; a statement from the landlord of the applicant and her spouse, dated April 25, 2005; and telephone and cable bills for the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States without inspection in November 2000. *Consular Memorandum*, dated February 2, 2006. In February 2003, the applicant was detained by the police after a traffic stop and charged with driving without a license. *Id.* As a result of the detention, the applicant was placed in immigration proceedings. *Id.* On May 3, 2004, an immigration judge granted the applicant voluntary departure. *Order of the Immigration Judge, Immigration Court, Miami, Florida*, dated May 3, 2004. The applicant complied with the order, departing the United States on August 21, 2004 and presenting himself to the U.S. Embassy in Lima, Peru on August 24, 2004. *Form G-146, Record of Departure*. In applying for a visa based on the approved Form I-129F, fiancé(e) petition benefiting him, the applicant is seeking admission within ten years of his August 21, 2004 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 a violation of 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. The plain language of the statute indicates that hardship that the applicant would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Peru or 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.

If the applicant's spouse travels with the applicant to Peru, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born and raised in the United States. *Birth certificate for the applicant's spouse*; *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The father of the applicant's spouse is deceased and her mother resides in the United States, in the same city as the applicant's spouse. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. **While the**

applicant's spouse understands Spanish, it is very difficult for her to speak the language. *Statement from the applicant's spouse*, dated April 19, 2005. The applicant's spouse has a history of mental illness relating to depression. *Id.; Medical records for the applicant's spouse*. In 1997 the applicant was constantly depressed and attempted to overdose on an unknown medication. *Patient Progress Notes, Florida Medical Center*, April 6, 1999. In March 1999, the applicant attempted suicide by cutting her wrist. *Id.* She has a scar as a result of this attempt. *Report of Law Enforcement Officer Initiating Involuntary Examination, State of Florida*, dated April 6, 1999. On April 6, 1999 the applicant's spouse felt that if she had to stay in her house, she was going to get so depressed that she would kill herself. *Id.* She was placed in a medical center where she could be monitored for suicide. *Observation and Special Precautions Notes, Florida Medical Center*, dated April 5, 1999 to April 8, 1999. The applicant's spouse was diagnosed as posing a danger to herself, having Major Depression, both chronic and recurrent, and having a dependent personality. *Id.; Multidisciplinary Treatment Plan, Florida Medical Center*, dated April 6, 1999. She was placed on various medications. *Chronological List of Patient Continued Medications, Florida Medical Center*, dated April 6, 1999 and April 7, 1999. She was also placed on a treatment plan involving therapy and support groups. *Master Treatment Plan, Florida Medical Center Psychiatry and Behavioral Health Services*, dated April 6, 1999. On July 14, 2004 the applicant's spouse sought psychiatric treatment at the Henderson Mental Health Center for anxiety, panic attacks, depression, and for hearing voices. *Psychiatric Evaluation, Henderson Mental Health Center,* dated July 14, 2004*; Bio-Psychosocial Evaluation, Henderson Mental Health Center, Inc*. While the record does not address whether the applicant's spouse would be able to receive appropriate psychiatric treatment in Peru, the AAO notes that the applicant's spouse has a history of receiving care within the United States. Furthermore, the applicant's spouse does not speak Spanish and even if adequate care were available in Peru, she would not be able to benefit from it due to her language inabilities. When looking at the aforementioned factors, specifically the fact that the applicant's spouse was born and raised in the United States, her family support is in the United States, her inability to speak Spanish, and her well-documented history of significant mental illness, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The mother of the applicant's spouse lives in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. As previously noted, the applicant's spouse has a history of mental illness relating to depression and has previously attempted to harm herself. *Medical records for the applicant's spouse*. In July 2004, after the applicant had received his order of voluntary departure but prior to his leaving the United States, the applicant's spouse sought psychiatric treatment at the Henderson Mental Health Center for anxiety, panic attacks, depression, and for hearing voices. *Psychiatric Evaluation, Henderson Mental Health Center,* dated July 14, 2004*; Bio-Psychosocial Evaluation, Henderson Mental Health Center, Inc.* While the applicant's spouse was going to the Henderson Mental Health Center, the applicant was by her side, accompanying her to the doctor. *Statement from the applicant's spouse*, dated April 19, 2005. Her panic attacks lessened and she did not hear any voices. *Id.* Immediately after the applicant left the country, the applicant's spouse cut herself. *Medical/Psychiatric Services, Henderson Mental Health Center, Inc.*, dated October 20, 2004. She began going to the health clinic twice a week, as her panic attacks intensified and she started to hear voices again. *Statement from the applicant's spouse*, dated April 19, 2005. Being separated from the applicant is causing her emotional situation to deteriorate. *Id.* The applicant's spouse fears that it will only worsen with the applicant's prolonged absence, and will lead to her self destruction. *Id.*

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 being deported. While the AAO acknowledges these cases, it notes that the self-destructive behavior of the applicant's spouse is not a common result of being separated from one's loved one. When looking at the aforementioned factors, specifically the applicant's spouse's history of significant mental illness, as documented by medical records, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's unlawful entry to the United States and the period of unlawful presence for which he now seeks a waiver.

The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his supportive relationship with his spouse, his compliance with the immigration judge's order to voluntarily depart the United States, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.