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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: JAN 15 2009

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), and Section 212(h) of the Act, 8 U.S.C. § 1182(h)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 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 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 section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen 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), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and step-children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The officer in charge further found that even if the extreme hardship threshold had been met, the applicant would be undeserving of a favorable discretionary decision. The officer in charge denied the application accordingly. *Decision of the Officer in Charge*, dated November 7, 2006.

On appeal, counsel contends that the officer in charge failed to give proper weight to evidence of hardship, and failed to give the applicant an opportunity to explain his arrest history.

The record contains, *inter alia*: a copy of the marriage record of the applicant and his wife, Ms. [redacted] indicating they were married on February 25, 1997; a statement from [redacted]; a letter from the applicant; copies of conviction documents; a copy of the immigration judge's order granting the applicant voluntary departure with an alternate order of deportation to Peru; the applicant's warrant of removal showing that he was removed from the United States on May 23, 2002; copies of financial documents; and several letters of support for the applicant. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

> 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 this case, the record indicates, and the applicant does not contest, that he entered the United States without inspection on March 22, 1991. On October 11, 1991, the applicant, using the name of [redacted]," was arrested and charged with grand theft in the second degree. On January 7, 1992, he pled nolo contendere and was sentenced to two years probation. The applicant told a consular officer that he bought a fake Social Security card in the name of [redacted] in order to obtain work and presented that card to the police when he was arrested. On July 26, 1994, an immigration judge granted the applicant voluntary departure, ordering him to depart on or before December 15, 1994. The applicant failed to depart and remained in the United States. Two years later, on January 25, 1996, the applicant was arrested for driving under the influence, pled guilty, and was sentenced to twelve months probation. On February 25, 1997, the applicant married his wife, a U.S. citizen. On July 1, 1999, the applicant was arrested for first degree misdemeanor battery, convicted, and ordered to pay court costs of $106. On May 23, 2002, the applicant was deported to Peru.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States on May 23, 2002. Therefore, the applicant accrued unlawful presence of five years. He now seeks admission within ten years of his May 2002 departure date. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant himself, or his children, may experience is not a permissible consideration under the Act. *Id.* 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).[1]

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 under the Act. 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.

The applicant's wife, [redacted], contends her marriage to the applicant has been a blessing after many years of failed relationships and that she has suffered extreme hardship since her husband's deportation. She claims that when her daughter left home and she suffered depression from "empty nest syndrome," her husband was by her side and she was able to stop taking anti-depressant medication. She further states that when she was diagnosed with carpal tunnel syndrome and unable to work, and when she had a hysterectomy, her husband was by her side. She states that since her husband's deportation, she has worked two jobs in order to support her family, but that, ultimately, she was unable to do so. Her daughter went to live with an aunt in New York, and her son went to live with a friend in Florida. [redacted] contends her life has fallen apart and that if her husband's waiver application is denied, she would be forced to move to Peru to be with him, leaving behind her children. *Statement of* dated December 16, 2005.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied. As an initial matter, the AAO notes that the applicant married his wife in February 1997, more than two years after he failed to voluntarily depart the United States and his alternate order of removal became effective. Therefore, the equity of the couple's marriage and the weight given to any hardship to [redacted] is diminished as the parties married after the applicant was under a final order of deportation. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir.

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[1] The applicant is also inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude based on his grand theft conviction and counsel does not contend otherwise. *See Briseno-Flores v. Att'y Gen. of U.S.*, 492 F.3d 226, 228 (3d Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland,* 232 F.2d 183, 184 (3d Cir. 1956) ("It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen"), and *Matter of Scarpulla,* 15 I&N Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude")). Because, as explained *infra*, the applicant has not met his burden of establishing eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), it is unnecessary to determine whether the applicant has established eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h).

1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a "post-deportation equity" need not be accorded great weight).

The AAO recognizes that has endured hardship since the applicant's deportation and is sympathetic to the family's circumstances. However, there is insufficient evidence in the record to show extreme financial hardship to [redacted] since the applicant's deportation. There are no tax documents in the record, no evidence from employers verifying [redacted]s past or current employment, and no documentation regarding her wages. There is also no evidence addressing to what extent the applicant supported his family while he was in the United States. [redacted]s Application for Permanent Residence in Canada, which she signed on August 24, 2002, stated that she was unemployed; however, on her Biographic Information form (Form G-325A), she indicated that during that time, she was employed as a mail clerk for the U.S. Postal Service. Although the record contains several copies of notices indicating [redacted] is delinquent in payments, without accurate information regarding [redacted] work history and information regarding the extent to which the applicant financially supported the family, the AAO is not in the position to attribute [redacted] financial difficulties to the applicant's deportation. In addition, there is no medical documentation or elaboration regarding [redacted]s carpal tunnel syndrome and whether or when she was able to return to work. Moreover, there is no evidence [redacted] could not obtain employment in Peru. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

Regarding the personal and emotional hardship [redacted] claims, the Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

In addition, there is insufficient evidence to show that [redacted] would experience extreme hardship if she moved to Peru to be with her husband to avoid the hardship of separation. There is no

information in the record regarding how many children [redacted] has or how old they are. In her Application for Permanent Residence in Canada, she listed only one dependent child, [redacted] who was born in August 1985, and one grandchild. As such, there is insufficient record evidence to substantiate contention that leaving behind her children, who do not live with her in the United States, rises to the level of extreme hardship.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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.