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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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FILE: [redacted] Office: LIMA, PERU Date: JAN 29 2009

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:

[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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Thumway

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 applicant is a native and citizen of Argentina 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 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility to the United States. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated October 13, 2006.

On appeal, counsel submits new evidence and states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. Counsel also states that the favorable exercise of discretion is warranted in the applicant's case. *Letter from Counsel*, dated December 6, 2006.

The record indicates that the applicant entered the United States under the Visa Waiver Program in June 2001. The applicant remained in the United States until July 2003. Therefore, the applicant accrued unlawful presence from September 2001, when her authorized stay under the Visa Waiver Program would have expired until July 2003, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her July 2003 departure from the United States. Therefore, the applicant is 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.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from 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 U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship experienced by the applicant due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established both in the event that he resides in Argentina or in the event that he resides in the United States, as he 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.

In a letter on appeal, counsel states that the applicant's spouse will suffer extreme hardship if the applicant's waiver application is not approved and that in addition to evidence already submitted, he is submitting new evidence of hardship. *Counsel's Letter*, dated December 6, 2006. Counsel states

that the documents submitted show that the applicant's spouse will be forced to make a choice between remaining with his parents in the United States or relocating to be with the applicant. Counsel also adds that the applicant's presence in the United States would alleviate her spouse's time commitments in caring for his ailing parents. *Id.* The documentation submitted includes letters from the applicant's parents' doctors, a letter from the Kaiser Permanente Medical Center, a joint declaration from the applicant's spouse's siblings, and a declaration from the applicant's spouse.

The letter from the applicant's father-in-law's doctor, [redacted], dated November 29, 2006, states that the applicant's father was diagnosed with Chronic Lymphocytic Leukemia and underwent chemotherapy from January 2005 to June 2005. The letter also states that the applicant's father has been suffering from fatigue, neuropathy, and requires constant care at home. The letter from the applicant's mother-in-law's doctor, [redacted], dated November 29, 2006, states that the applicant's mother is being treated for Diabetes Mellitus Type 2, Hypertension, Hyperlipidemia, and Hypothyroidism with medications and diet. [redacted] states that the applicant's spouse helps his mother with her healthcare. The letter from a psychological assistant and a [redacted] at the Kaiser Permanente Medical Center, dated November 15, 2006, states that she met the applicant's spouse on November 15, 2006 for an intake appointment where he presented depressive symptoms such as depressed mood, anhedonia, fatigue, sleep disturbance, lack of appetite, poor concentration, and feelings of hopelessness caused by the inability of his spouse to return to the United States after four years. [redacted] also states that the applicant's spouse reports worrying about making a decision between being with his wife and being with his parents. [redacted] states that the applicant's spouse will be treated for his symptoms at the clinic. *Id.* The joint declaration submitted by the applicant's spouse's siblings states that the applicant's spouse is the principal sibling responsible for the overall care of their parents, including bringing them to their numerous medical appointments, making certain that they are taking their medications and providing more financial support to their parents than they provide. *Joint Declaration*, dated December 2, 2006. The siblings state that applicant's spouse is the oldest son and their parents look to him as their primary caretaker. They state that their parents will suffer severe emotional distress in the applicant's spouse's absence and that the applicant's spouse will suffer emotional distress by being separated from his wife. *Id.* The applicant's spouse states that his parents are ill and that he is their primary caretaker. *Spouse's Declaration*, dated December 5, 2006. He states that he feels compelled to be with his parents, but also feels compelled to be with the applicant, who is in a country that refers to as not safe or economically stable. He also states that as a result of not being with the applicant and the difficult choices he is faced with, he has been experiencing depression and is being treated by a psychologist. *Id.*

In addition to the documentation submitted on appeal, the record contains documentation from when the waiver application was first submitted. The applicant's spouse states in a letter, dated July 2, 2006, that he has been apart from the applicant for three years and that they communicate every day. He states that the time when they were living together was the happiest time in his life and that he could not imagine life without her. He also states that he and the applicant have suffered financially, with education, starting a family, buying a home, and being productive citizens. The applicant also submitted a letter, dated July 20, 2006. The applicant states that family is very important to her and that the last three years have been very hard and difficult for her. She states that she thinks about her

spouse all day long, that he has worked hard to support her and her mother and that she is looking forward to returning to the United States.

Consular notes taken on July 7, 2006 during the applicant's visa interview at the U.S. Embassy in Buenos Aires, Argentina state that the applicant has been working in an accounting studio in Argentina since 2004 and earns $250 per month. During the interview the applicant stated that she met her spouse through the internet in 1999 and that in 2001 they met for the first time. The applicant stated that after a few months, in June 2001, she decided to stay in the United States, in November 2002 she and her spouse were married and that she left the United States in July 2003. The applicant states that she and her spouse communicate every day and that he has come to visit her two times. The applicant also stated that her spouse was suffering emotional damage from being separated from her, that he is working as a paralegal during the week and on the docks in San Francisco during the weekends. She asserted that although her spouse speaks Spanish fluently, it would be difficult for him to find employment in Argentina.

The AAO notes that the current record does not show that the applicant's spouse is suffering extreme hardship as a result of being separated from the applicant. The record states that the applicant's spouse has seen a psychologist to treat symptoms of depression. The letter from the applicant's spouse's psychologist states that the applicant's spouse is being treated in her clinic, but does not include any details of this treatment and is therefore of less weight when making a determination of extreme hardship. The record also indicates that the applicant's spouse has been to visit the applicant on two occasions. Furthermore, the record does not show that the applicant's spouse would experience extreme hardship upon relocating to Argentina to be with the applicant. The joint statement by the applicant's spouse's seven siblings indicates that as the oldest son, the applicant's spouse is expected to be the primary caretaker for their parents. The statement does not explain, given the circumstances, why the other siblings could not share in these responsibilities upon the applicant's spouse's relocation to Argentina. In addition, the applicant stated during her interview at the U.S. Embassy in Argentina that she had found employment. She provides no evidence that her spouse, as a Spanish speaker, would not be able to find employment in Argentina. Therefore, the AAO finds that the applicant has not established that her spouse would suffer extreme hardship as a result of her inadmissibility to the United States.

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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, 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.