**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090



**U.S. Citizenship and Immigration Services**

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAY 06 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, 8 U.S.C. section 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.

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).

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 Uruguay. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure from the United States. He is married to a U.S. citizen. He 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).

The Officer in Charge concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on November 28, 2006.

On appeal, counsel for the applicant contends that the economic and financial impacts of the applicant's inadmissibility will result in extreme hardship to his wife if she remains in the United States. Counsel further contends that relocation to Uruguay is not a viable option.

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-
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> . . . .
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> (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.
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> . . . .
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> (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 [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 record indicates that the applicant entered the United States on December 28, 2001, under the Visa Waiver Program, and resided in the United States until December 2005, when he voluntarily departed to Uruguay. The applicant's period of lawful admission under the Visa Waiver Program expired after 90 days. Therefore, the applicant was unlawfully present in the United States for over a

year, from April 2002 until December 2005, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; s*ee also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence:

1. Statements from the applicant's wife, dated June 1, 2006, and January 11, 2007, detailing problems in her previous marriage to the father of her three children, the military deployment of her oldest son to Iraq for six months, the assignment of her other son to a duty station in New Orleans for the U.S. Coast Guard, and the enrollment of her daughter at a university in Connecticut. She states that she is being torn apart due to her husband's exclusion, and that

the combined stress of her previous emotional abuse, sons' deployment, daughter's absence, sister's death and exclusion of her husband have pushed her to a breaking point. She also states that she cannot leave her current job to move to Uruguay and would not be able to find employment there if she were to do so.

2. Two statements, dated January 10, 2007 and May 30, 2007, from a licensed marriage and family therapist, indicating that she has been seeing the applicant's wife for six months and that the applicant's wife is clinically depressed and has been prescribed Lexapro. She further states that the applicant is suffering a financial burden from the exclusion of the applicant, may lose her house to foreclosure, and cannot afford to visit her mother in Costa Rica.
3. Statements from family members, asserting that the applicant's spouse cries a lot, is depressed, does not go out, and remains at home alone in her room with the door closed due to her sadness over her husband's exclusion.
4. Statements from co-workers and friends of the applicant's spouse asserting that she is suffering psychologically, has become distracted, has started arriving late to work, isolates herself in the office with the door closed, is not eating, and even forgets where she parked her car, all of which is due to the pain and suffering of her husband's exclusion.
5. Statement from the petitioner's supervisor, asserting the applicant has had problems maintaining her positive, outgoing persona, and has become sensitive, irritable and isolated due to the suffering caused by her husband's exclusion. He indicates that he ordered the applicant's spouse to seek counseling through the employee assistance program.
6. The section on Uruguay from the 2006 U.S. Department of State Country Reports on Human Rights practices.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that the applicant's wife is clinically depressed and references the two statements of [redacted] submitted for the record. Counsel also details the applicant's spouse's previous abusive marriage, her oldest son's deployment to Iraq, her other son's stationing with the United States Coast Guard in New Orleans, and the absence of her daughter attending college. Counsel notes that the applicant's spouse's house is in foreclosure proceedings and the applicant's spouse also asserts that she is suffering financially due to the applicant's exclusion.

The AAO finds the record to contain sufficient documentation to establish the applicant's spouse has been diagnosed with clinical depression as the result of her separation from her husband. It also notes that the diagnosis reached by [redacted] is supported by numerous letters from the family, friends and coworkers of the applicant's spouse who report significant changes in her personality and behavior following the exclusion of the applicant from the United States. The record also contains documentary evidence that proves the applicant's spouse's home is in foreclosure proceedings. It also indicates that she sent money to the applicant in Uruguay during the years 2006 and 2007. However, the record does not establish that that the applicant is required to financially provide for the applicant. While the record contains the section on Uruguay from the 2006 U.S. Department of State Country Reports on Human Rights Practices, the report's general information on economic conditions in Uruguay does not establish that the applicant would be unable to work in

Uruguay or that he could not financially assist his spouse from Uruguay, thereby reducing her financial burden. Moreover, the AAO notes that, during his June 27, 2006 consular interview, the applicant indicated to the interviewing officer that he had obtained a job the previous day. The AAO also finds that the record does not contain any documentation of the spouse's financial status, including the amount of her mortgage payment, her monthly expenses, including the costs, if any, of her daughter's education. Nevertheless, in light of the applicant's spouse's documented mental health problems, the AAO finds the applicant to have established that his spouse would suffer extreme hardship if his waiver application were to be denied and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The record contains numerous statements by family, friends and coworkers which assert that the applicant's spouse is under psychological stress based on the fact that she might have to make a choice between remaining in the United States without her spouse, or relocating to Uruguay to be with her husband and be separated from her children. Counsel for the applicant asserts on appeal that relocation would not be a viable option for the applicant's spouse. Counsel states that the applicant's spouse has resided in the United States for most of her adult life, and would be separated from her family and friends. Counsel also states that the applicant's spouse could not move to Uruguay because "[t]here is no guarantee that if [she] were to relocate to Uruguay that she would be able to find a psychologist with whom she is comfortable." Counsel further states that the applicant's spouse would suffer financially if she relocated to Uruguay, noting that she and the applicant purchased a home in July 2005 and that she is struggling to keep it without the applicant's financial support. The applicant asserts that if she were to move to Uruguay, she would not be able to find employment.

Although the AAO notes counsel's claims that the applicant's wife would not be guaranteed of finding a compatible psychologist in Uruguay to treat her depression, it again does not find the record to provide the documentary evidence, e.g., published country conditions reports, to support his assertion. Moreover, the AAO notes that the record offers no psychological evaluation in support of counsel's claim that the applicant's spouse would continue to require mental health treatment if she joined the applicant in Uruguay. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. . *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). The record also fails to support the applicant's spouse's assertion that she would be unable to obtain employment in Uruguay. As previously discussed, the material on Uruguay form the U.S. Department of State Country Reports on Human Rights Practices offers only general information on conditions in that country. Accordingly, the record does not demonstrate that the applicant's spouse would experience extreme hardship if she relocated to Uruguay.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife would face extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's wife will suffer emotionally as a result of the applicant's inadmissibility. The record, however, does not distinguish the hardship she would experience from that normally associated with removal. U.S. court decisions have repeatedly held

that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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)(v) of the Act, the burden of proving eligibility rests 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.