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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: LIMA PERU Date: JUL 18 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(9)(B)(i)(II)

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

The applicant, [redacted] (Mrs [redacted] 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for one year or more. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to travel to the United States to join her husband [redacted] (Mr. [redacted] who is a U.S. citizen.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her U.S. citizen husband, if she were denied admission to the United States, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated June 24, 2004.

On appeal, counsel for the applicant states that the OIC erred by not properly considering the psychological hardship suffered by her husband, Mr. [redacted], and that he would continue to suffer if the applicant were denied a waiver and not allowed to join him in the United States. In support of this statement, counsel filed a "Motion to Reconsider or in the Alternative Appeal," along with a Psychological Evaluation of Mr. [redacted] in which the evaluating doctor concluded that Mr. [redacted] is "suffering from a Major Depressive episode, precipitated by his separation from his wife and the resultant loss of self-esteem due to his being prevented from fulfilling his expectation to raise a family. His condition is exacerbated by the unresolved trauma of his father's death." *See Psychological Evaluation of* [redacted], dated November 11, 2004, at p. 8. Mr. [redacted] explained that he has wanted to be a pilot since he was a child, and that his father, grandfather and uncle were pilots and that his father, who died when Mr. [redacted] was 18, was proud of his son's ambition to be a pilot. *Id.* at p. 3. Counsel added that Mr. [redacted] if separated from his wife, would "likely lose any chance to have and raise children in an intact family home. . . . [or he would have to] . . . give up the career which is so dear to his heart, soul and family identity, that of a pilot." *See Motion to Reconsider or in the Alternative Appeal,* dated November 15, 2004, at p. 3. Counsel indicated that a brief would be submitted. On May 16, 2006, the AAO requested a copy of that brief. In response, counsel resubmitted the Motion and attached Psychological Evaluation (*supra)* and included Mr. [redacted] payment records from Atlantic Coast Airlines for August to October 2004; bank statements and a credit card bill from September and October 2004; and the U.S. Department of State Country Reports on Human Rights Practices for 2003, chapter on Argentina, published February 25, 2004. Also in the record are letters from Mr. [redacted] his employer, and his sister-in-law, all attesting to his depression and the emotional and financial difficulties he is experiencing due to his separation from his wife. *See Application for Waiver of Ground of Inadmissibility* (Form I-601), dated June 6, 2004. The entire record was reviewed and considered in rendering this decision.

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.

Regarding the OIC's finding that Mrs. [redacted] is inadmissible pursuant to this section, the record reflects that she entered the United States in June 2000 under the Visa Waiver program and returned to Argentina in January or February of 2002, thus overstaying her visa and remaining unlawfully in the United States for over one year. Though the exact dates of entry and departure are not stated, counsel does not contest this finding. In applying for an immigrant visa Mrs [redacted] is seeking admission within 10 years of her 2002 departure from the United States. She 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 one year or more and again seeking admission within 10 years of the date of her departure.

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 or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. In this case, the sole qualifying relative is Mr. [redacted]

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, supra* at 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. In examining whether extreme hardship has been established, the BIA has held:

> 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).

In this case, the record reflects that the both applicant and her husband were born in Buenos Aires, Argentina, in 1973 and 1974 respectively, and lived there most of their lives. After graduating from high school in Buenos Aires, Mr. [redacted] joined the U.S. Navy; he later returned to Argentina to get a pilot's license. The couple met in Buenos Aires and they were married there in January 2003. Mr [redacted] moved to the United States in October 2002 when economic conditions in Argentina became difficult, but he traveled to Buenos Aires on a regular basis, approximately once a month if finances and work schedule allowed, and spoke to his wife daily by telephone. From December 2002 until July 2004, Mrs. [redacted] worked as a professional cook in Buenos Aires; in July 2004, she quit her job and moved in with her mother. She depends on Mr [redacted] for financial support. Mr. [redacted] works in Virginia as a ramp supervisor at Dulles Airport; before that he was a flight instructor in Argentina. His sister is married and lives in Virginia; his mother lives in Buenos Aires. *See Form I-601 and attachments.*

It is clear from the psychological evaluation, *supra,* and statements from Mr. [redacted] his wife, sister and his employer, that he is suffering greatly because of his separation from his wife, and that he is depressed and lonely. He is also working overtime to be able to afford visits to Argentina and to contribute to his wife's support, which is affecting his health. It is also clear that his emotional problems would be alleviated if he and his wife could live together as they had planned when they married. Though Mr. [redacted] left his wife to go to the United States for economic reasons, he was working at the time in Buenos Aires, and there is no indication that he would not be able to again find work in Argentina if he chose to return. His wife trained at a culinary institute in Argentina and worked as a professional cook before she quit her job in 2004. There is no indication that their combined income in Argentina was more or less than what Mr [redacted] earns in the United States, and though working in Argentina would represent a change in his financial situation, there is no indication that this would be a significant burden or that his wife would not be able to supplement their income. As both Mr. [redacted] and his wife were born and raised in Buenos Aires, and have more family ties there than in the United States, Mr. [redacted] could eliminate the current hardship of separation without much difficulty if he chose to join his wife in Argentina, where he would have both the support of family and the potential for employment. Though M [redacted] indicated that he would suffer if he had to give up his dream of becoming a pilot, there is no indication in the record that working in the United States is furthering this dream nor that living in Argentina would interfere with this dream. It appears that Mr. [redacted] faces

the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. [redacted] faces extreme hardship if his wife is refused admission. 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 individuals who are deported.

In this case, though Mr. [redacted] will endure hardship if he remains in the United States separated from the applicant, his situation, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship; moreover, should he decide to return to Argentina to join his wife, this would not represent a hardship to him. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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(h) 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.