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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

[redacted]

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FILE: [redacted] Office: LIMA, PERU Date: APR 06 2009

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Lima, Peru, and 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 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 record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant 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), in order to reside in the United States with her United States citizen husband.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Decision of the Officer in Charge*, dated June 6, 2006.

The AAO notes that the OIC denied both the applicant's Form I-601 and Form I-212; however, the applicant filed one appeal and the AAO will only adjudicate the applicant's appeal on the Form I-601 denial. The Adjudicator's Field Manual offers guidance on adjudicating Forms I-601 and Forms I-212 that are filed together. *See* Adj. Field Manual 43.2.

43.2 Adjudication Processes.

> (c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

On appeal, the applicant, through counsel, contends that "[t]he Applicant provide[d] sufficient evidence that her USC husband will suffer extreme hardship through her continued inadmissibility." *Form I-290B*, filed July 5, 2006.

The record includes, but is not limited to, counsel's brief; affidavits from the applicant's husband; and affidavits and declarations from family and friends. The entire record was reviewed and considered in arriving at 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-
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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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> (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.

In the present application, the record indicates that the applicant initially entered the United States under the Visa Waiver Program on August 11, 2000, with authorization to remain in the United States until November 9, 2000. On January 26, 2002, the applicant was ordered removed under section 235(b)(1) of the Act. On April 4, 2002, the applicant was expeditiously removed from the United States. On or about January 10, 2005, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On January 20, 2005, the applicant's husband filed a Form I-129F on behalf of the applicant. On June 9, 2005, the applicant's Form I-129F was approved. On January 27, 2006, the applicant filed a Form I-212. On February 1, 2006, the applicant filed a Form I-601. On June 6, 2006, the OIC denied the Form I-212 and Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from November 9, 2000, the date the applicant's authorization to remain in the United States expired, until April 4, 2002, the date the applicant was removed from the United States. The applicant is attempting to seek admission into the United States within 10 years of her April 4, 2002 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 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. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that the applicant's husband has been suffering extreme hardship since the applicant was removed from the United States. *See appeal brief,* August 1, 2006. The applicant's husband states that he is suffering depression. ***Letter from*** [redacted], dated July 31, 2006; *see also affidavit from* [redacted], dated July 31, 2006 ("[The applicant's husband] seems depressed with all the things going on. [He] worr[ies] that [the applicant's husband] cannot handle all the pressure he is feeling right now."); *see also statement from* [redacted] dated July 31, 2006 ("[The applicant's husband] is depressed over this situation and is making him a completely different person that is not turning him into a positive way mentally, and for this [he is] very concerned for [his] brother."); *see also letter from* [redacted], dated July 31, 2006 ("[The applicant's husband] is close within himself and doesn't talk to any body."). [redacted] states the applicant's husband is depressed and he "feels a sense of hopelessness. He has become an introverted person.... It is [her] professional opinion that if this separation continues, [the applicant's husband] will suffer extreme consequences psychologically." *Letter from* [redacted], *School Psychologist*, dated July 31, 2006. The AAO notes that even though [redacted] provided a brief letter regarding the impact of the applicant's removal on her husband's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states the applicant "does not speak Spanish, he has no college degree and has no connections in Argentina." *Appeal Brief, supra* at 2. The AAO notes that the applicant's husband may experience some hardship in relocating to Argentina, a country in which he has no previous ties; however, it has not been established that there are no employment options for him in Argentina solely because of his lack of fluency in the Spanish language. Additionally, it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Argentina. Moreover, the AAO notes that during the applicant's visa interview, the applicant's husband stated that if the applicant could not return to the United States, he would move to Argentina or they would relocate someplace else. *See memorandum report of interview*, dated February 1, 2006. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Argentina.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his family. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's husband is suffering "the financial burden of sustaining two households." *Appeal Brief, supra* at 6. The AAO notes that it has not been

established that the applicant is unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

The AAO notes that a review of the record reflects that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The AAO notes that the record establishes that the applicant has continued to reside in Argentina since her expedited removal on April 4, 2002. Counsel states that the applicant travels back and forth to Argentina to visit the applicant. *See appeal brief, supra* at 7. Additionally, the applicant states she resides with her mother in Argentina. *See memorandum report of interview, supra.* The AAO finds that the applicant has been residing in Argentina for more than the statutory five-year period, and she no longer needs permission to reapply for admission after her removal. However, the applicant is still inadmissible 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 more than one year and seeking readmission within 10 years of her last departure from the United States.

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.