

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



H₂

FILE:



Office: LIMA, PERU

Date: NOV 27 2009

IN RE:

Applicant:



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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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).

Perry Rhew
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 Peru 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 Relative (Form I-130). 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 and children.

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) accordingly. *Decision of the Officer in Charge*, dated May 31, 2007.

On appeal, the applicant, through counsel, asserts that the "[OIC] erred in finding that Applicant's USC spouse and children would not suffer extreme hardship if she is refused admission into the United States." *Form I-290B*, filed June 26, 2007.

The record includes, but is not limited to, counsel's appeal brief; a letter and affidavit from the applicant and her husband; copies of tax returns, property tax and mortgage documents; and the applicant's marriage certificate. 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-

....

(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 [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 AAO notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant married [REDACTED] on May 24, 1974 in Peru. On March 7, 1998, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until September 5, 1998. On June 30, 1998, the applicant departed the United States. On October 12, 1998, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until April 11, 1999. The applicant failed to depart the United States when her authorization expired. On August 4, 2000, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On September 20, 2000, a Notice to Appear (NTA) was issued against the applicant. On September 26, 2000, the applicant's Form I-589 was referred to an immigration judge. On December 31, 2000, the applicant and [REDACTED] divorced. On January 16, 2001, an immigration judge granted the applicant voluntary departure to depart the United States by May 16, 2001. The applicant failed to depart the United States as ordered by the immigration judge. On March 5, 2001, the applicant and [REDACTED] remarried in Florida. On April 30, 2001, the applicant's lawful permanent resident husband filed a Form I-130. On September 16, 2003, the applicant's husband became a United States citizen. On December 13, 2004, the applicant's Form I-130 was approved. On January 5, 2005, the applicant departed the United States. On or about December 6, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and a Form I-601. On May 31, 2007, the OIC denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 11, 1999, the date the applicant's authorization to remain in the United States expired, until January 5, 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 5, 2005 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 states the applicant's husband "would suffer extreme hardship if [the applicant] is not allowed to return to the United States." *Appeal Brief*, page 2, dated July 19, 2007. In an affidavit dated December 6, 2007, the applicant's husband states if the applicant "is not allowed back in the country the only two choices [he] will be left with will forever destroy [his] family unity." The AAO notes that the applicant's husband is a native of Peru, he speaks Spanish, and he spent his formative years in Peru. Additionally, it has not been established that the applicant's husband has no family ties in Peru. In fact, the AAO notes that the applicant's husband's brother resides in Peru. Counsel states "[a]s a result of the difficult economic and political conditions in Peru [the applicant's husband's] ability to earn a living will be substantially compromised.... [H]e would not be able to earn enough money to maintain his assets in the United States." *Appeal Brief, supra* at 3. The AAO notes that in an undated letter, the applicant states her husband lost his job as a computer programmer "because he came to Peru many times." Additionally, the AAO notes that the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job in Peru and that there are no employment opportunities for him there.

Counsel states all three of the applicant's children reside with the applicant's husband in the United States. The AAO notes that the applicant's children are all adults, and they did not provide statements or affidavits regarding what, if any hardship they would suffer if the applicant were removed from the United States. Additionally, the AAO notes that the applicant's children are natives of Peru. If the applicant's children decide to join the applicant, the AAO notes that they may experience some hardship in relocating to Peru; however, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's wife states she worries about her husband's health and he is becoming "more and more depressed." The AAO notes that other than this statement from the applicant, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any emotional hardships or whether any emotional hardship is beyond that typically experienced by others as a result of inadmissibility or removal. Additionally, there is nothing in the record establishing that the applicant's husband is currently suffering from any medical conditions. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Peru.

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. Counsel states "[t]he country conditions in Peru....make it impossible for [the applicant's husband] to consider relocating there." *Appeal Brief, supra* at 3. 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. The AAO notes that beyond generalized assertions regarding country conditions in Peru, the record fails to demonstrate that the applicant will be 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.

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.