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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

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FILE:

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Office: LIMA, PERU

Date:

JAN 12 2010

IN RE:

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APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 8 U.S.C. § 1182(h)

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).

Perry Rhew
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 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 ten years of his last departure from the United States and under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant's spouse and four children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 5, dated April 18, 2007.

On appeal, counsel asserts that the denial is in error as it does not consider the relevant factors in the aggregate and that certain factors presented by prior counsel were not reviewed altogether. *Form I-290B*, at 4, dated May 18, 2007.

The record includes, but is not limited to, counsel's brief, a physician's letter and medical report for the applicant's spouse, statements from the applicant and his spouse, financial records, an educational report and developmental evaluation for one of the applicant's children, and country conditions materials on Peru. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1985, was ordered removed to Peru on June 28, 1995, had his appeal before the Board of Immigration Appeals dismissed on May 7, 2001 and departed the United States on September 10, 2001. The applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions, until September 10, 2001, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his September 10, 2001 departure.¹

Section 212(a)(9)(B) of the Act provides, in pertinent part:

¹ The AAO notes that the applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude (April 22, 1994 conviction under 18 U.S.C. § 472 for possession and passing of counterfeit notes). The AAO will not determine whether the applicant is qualified for a waiver under section 212(h)(1)(A) or (B) of the Act as qualification for a waiver under section 212(a)(9)(B)(v) of the Act would also result in qualification for a waiver under section 212(h) of the Act. For this same reason, the AAO will not determine whether the applicant's November 8, 1999 stalking conviction in Virginia is a crime involving moral turpitude.

(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 or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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 a qualifying relative must be established whether the qualifying relative resides in Peru or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Peru. Counsel states that Peru has struggled economically and politically, the combined unemployment and underemployment levels totaled 54 percent, 29 percent of the population lives in extreme poverty, the sluggish economy along with drug money have fueled political instability and organized terrorism, children's welfare and educational opportunities have been affected particularly hard by the political and economic problems of the country, 60 of the children live in poverty, only 51 percent will reach high school, and social inequality has resulted in many grim effects on the children. *Brief in Support of Appeal*, at 9-10, undated. The record includes country conditions information on Peru related to human rights practices, political issues, criminal issues and terrorism. The applicant states that he does not have employment, it is difficult to get employment, he helps his father administer a bus, he could not bring his family to Peru due to the

economic situation, Peru is a third world country and could not offer his children the education and life that they deserve. *Applicant's Statement*, at 3, dated September 26, 2006. While the AAO acknowledges the country conditions reports in the record, these materials do not provide sufficient evidence of the economy and employment situation in Peru as they would affect the applicant and his spouse. Accordingly, they do not establish that the applicant and his spouse could not obtain suitable employment in Peru. Neither do they establish that the applicant's spouse would be at risk as a result of political or human rights conditions in Peru. The record also does not include the evidence to support the applicant's claim of hardship to his son and how this hardship would affect his spouse, the only qualifying relative

The applicant's spouse states that she is a single mother of five children. *Applicant's Spouse's First Statement*, at 1, undated. However, the record does not include birth certificates for four of the claimed children. The record reflects that the applicant's spouse has been diagnosed with gallbladder disease. *Report from [REDACTED]* dated October 9, 2006. It further appears to indicate that the applicant's spouse has had her gallbladder surgically removed. *Medical Billing Statements*. The record does not include any documentary evidence to establish the state of the applicant's spouse's health following this surgery and how it might affect her ability to relocate to Peru. The AAO does not find the record to include sufficient evidence of emotional, financial, medical or other hardship factors that, in the aggregate, establish that the applicant's spouse would suffer extreme hardship upon relocating to Peru.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse has taken several trips to visit the applicant and this has depleted the family finances; the applicant's spouse was the single mother of four children before becoming acquainted with the applicant and giving birth to their son; and she has experienced depression, gallbladder disease, virtual bankruptcy and the retardation of her youngest child. *Brief in Support of Appeal*, at 6-7, 8.

The applicant's spouse states that she is a single mother of five children, the applicant was not in the country during her high-risk pregnancy, she almost miscarried her son twice due to work and stress, she lost her job when she was five months pregnant, and her family is in therapy. *Applicant's Spouse's First Statement*, at 1. The applicant's spouse states that when the applicant left she had to live in a basement with her four children as she could not afford a better place, she lived in the applicant's former apartment with his brother after her child was born but it was hard as the rent was too high, she was denied government assistance so she had to start working, it has been hard with childcare and childcare expenses, she is living paycheck to paycheck, their child has had at least five babysitters, their son is a special needs child, she misses her spouse terribly and needs him financially, physically and emotionally, she was hospitalized and had to ask co-workers and school administrators for help, her and her daughter could have used her spouse's help when her daughter had a premature baby, she has over \$200,000 in medical expenses, she cannot afford medical insurance for herself and her children as she needs that money for their monthly expenses, and her son only knows her spouse by talking to him on the phone and seeing his pictures. *Applicant's Spouse's Statement*, at 1-3, dated May 16, 2007. The record includes letters from some of the applicant's children that detail the difficulties that they are experiencing without him. The record

includes a developmental evaluation for the applicant's son reflecting that he has strong gross motor skills and age-appropriate fine motor skills; he is able to stay with an art project until it is completed; he shows an understanding of most pre-readiness skills, learning colors, shapes, letters and numbers; and his receptive and expressive language skills remain an area of concern, he has difficulty following simple directions, understanding questions using the more abstract concepts of who, what, where, when, why and how, and communicating what he thinks and understands using his expressive language skills. *Developmental Evaluation*, at 3, dated May 2, 2007.

The applicant states that his son was very sick and he was asking for him, the behavior of his daughter from a previous relationship changed when he left and she has become very rebellious, his daughter is in a school for girls with bad behavior and her grades have suffered, his spouse and children have been suffering, and he does not have employment and cannot help his family economically. *Applicant's Statement*, at 2-3.

The AAO finds the claims made by counsel, the applicant and his spouse to be largely unsupported by the record. As previously noted, the applicant has failed to submit documentation that establishes his spouse is the mother of four other children in addition to their son. The record does reflect that the applicant's spouse was diagnosed with gallbladder disease and appears to indicate that she had her gallbladder removed surgically. *Report from [REDACTED] Medical Billing Statements*. However, the applicant has submitted no evidence that establishes that, despite the surgery, she continues to experience health problems or how such problems affect her ability to function independently. The record also fails to document that the applicant's spouse is suffering from depression, that her daughter has given birth to a premature baby or that she has medical debt in the amount of \$200,000. The record includes medical bills for the applicant's spouse, but they reflect outstanding balances of nearly \$19,000, rather than \$200,000. While the AAO notes that one of the medical billing statements sent to the applicant's spouse indicates that her bill has been reduced as a result of financial hardship, it does not find the record to demonstrate that the applicant could not obtain employment in Peru and assist his spouse financially from outside the United States. There is also no documentary evidence to establish that the applicant's son has been sick or that his daughter from a prior relationship is experiencing problems in his absence. The AAO notes, however, that even if evidence of hardship to these children were included in the record, the record would have to establish how their hardship would affect the applicant's spouse, the only qualifying relative. The record also fails to demonstrate that the applicant's son is "retarded," as claimed by counsel. Although the developmental evaluation in the record indicates that certain of the applicant's son's skills are not as developed as they should be for his age, it reaches no conclusions about his cognitive abilities. Accordingly, while the record reflects that the applicant's spouse would experience difficulty it does not include sufficient evidence of emotional, financial, medical or other hardship factors that, in the aggregate, establish that she would suffer extreme hardship upon remaining in 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 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) 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.