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U.S. Citizenship  
and Immigration  
Services

H3

FILE:

Office: LIMA Date:

NOV 14 2006

IN RE:

LUCIANO ALBINO GARCIA RIOS

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Lima, Peru, denied the waiver application and it 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 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated March 28, 2005.

The record shows that, in 1986, the applicant entered the United States without inspection. The applicant took up unlawful residence and employment in the United States. In 1992, the applicant married his U.S. citizen former spouse who filed a Petition for Alien Relative (Form I-130) on his behalf. In 1995, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the Form I-130. After the applicant and his former spouse separated, the applicant's former spouse withdrew the Form I-130 and the applicant's Form I-485 was denied. On July 7, 1999, the applicant was placed into immigration proceedings. On October 29, 2002, the immigration judge denied the applicant's application for cancellation of removal and granted him voluntary departure until December 30, 2002. The applicant appealed to the Board of Immigration Appeals (BIA). On September 22, 2003, the BIA dismissed the applicant's appeal and granted him voluntary departure for a period of thirty days. On October 1, 2003, the applicant's divorce from his former spouse was finalized. On October 20, 2003, the applicant returned to Peru. On November 8, 2003, the applicant married his current U.S. citizen spouse, [REDACTED]. On February 12, 2004, Ms. [REDACTED] filed a Form I-130 on behalf of the applicant, which was approved on August 11, 2004.

On January 16, 2005, the applicant filed the Form I-601 along with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel asserts that the applicant's spouse is currently disabled and is receiving Supplementary Security Income (SSI), as a result of which she faces homelessness, and her psychological and/or health condition has worsened since her separation from the applicant. *Form I-290B*, dated April 28, 2005. Alternatively, counsel asserts that the applicant's spouse would live in poverty in Peru because the applicant has been unable to find employment in Peru and they would be unable to afford sufficient care for the applicant's spouse's psychological and medical conditions in Peru. In support of these assertions, counsel submitted only the Form I-290B. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within the time allotted. On October 24, 2006, the AAO informed counsel that she had five days in which to submit additional documentation to support the appeal. At no time did counsel forward a brief and/or additional evidence to support the appeal. The entire record was reviewed in rendering a decision in this case.

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.

The acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's unlawful presence in the United States for more than one year. Counsel does not contest the acting officer in charge's determination of inadmissibility.

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 alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

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 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 alien has established extreme hardship to a qualifying relative. 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. 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).

The record reflects that the applicant and Ms. [REDACTED] are in their 40's, and Ms. [REDACTED] may have some health concerns.

Counsel contends that the applicant's spouse would suffer extreme hardship if she were to remain in the United States without the applicant because she receives SSI in the amount of \$532 per month, she is facing homelessness and her medical and psychological conditions have worsened since the denial of the applicant's waiver. Ms. [REDACTED] in her affidavits, states that she is a disabled woman who has been struggling to meet her living medical expenses since the denial of the applicant's waiver, the applicant was the primary bread winner in the household and she will suffer a considerable loss in her standard of living and separation from the applicant would have a devastating effect upon her and her long-term prospects of marriage.

There are no financial records in the record to suggest that Ms. [REDACTED] currently receives SSI or that she is unable to support herself financially. The medical and psychological documentation, as discussed below, does not indicate that the applicant's conditions have worsened, that she is disabled, or that she is unable to perform daily activities or work duties to such an extent that her ability to earn a sufficient income is decreased or she is unable to care for herself on a daily basis. Moreover, the record reflects that the applicant has family members in the United States, such as her six siblings, who may be able to provide her with financial or physical assistance in the absence of the applicant. While it is unfortunate that Ms. [REDACTED] may have to lower her standard of living, the record does not support a finding of financial loss that would result in an extreme hardship to Ms. [REDACTED] if she had to support herself, even when combined with the emotional hardship described below.

A letter from a Psychiatric Clinical Nurse Specialist indicates that Ms. [REDACTED] has received psychiatric care at the Freedom Trail Clinic since 1997 for Post Traumatic Stress Disorder, Panic Disorder and Major Depression recurrent. The psychological documentation reflects that Ms. [REDACTED] has been successfully treated through psychotherapy and medication. There is no indication that Ms. Francis' recovery or treatment is dependent upon the applicant or that her condition has worsened since his departure from the United States. The medical documentation in the record reflects that Ms. [REDACTED] has hypertension, hyperlipidemia and gastroesophageal reflux. While the medical documentation reflects that Ms. [REDACTED] requires regular follow up and medications for these conditions, there is no indication that these conditions have worsened since the applicant's departure from the United States or that Ms. [REDACTED] treatment is dependent upon the applicant's presence. Moreover, the record reflects that Ms. [REDACTED] resides in the immediate vicinity of family members, such as her siblings, who may be able to support her physically and emotionally in the absence of the applicant.

Counsel contends that Ms. [REDACTED] would face extreme hardship if she relocated to Peru in order to remain with the applicant because it would be an emotional hardship to leave her family in the United States, she does not know the language, she would have to adjust to a new culture, she and the applicant would be unable to find employment and they would be unable to afford treatment for Ms. [REDACTED] psychological and physical illnesses in Peru. Ms. [REDACTED] in her affidavits, states that it would be difficult to be separated from her family and culture, she would be unable to attain the medical attention she requires, she would have trouble learning the new language, she would be unable to adjust to the level of hardships that Peruvians endure, and as an American woman it would be unsafe for her to reside in Peru.

The medical and psychological documentation in the record reflects that if Ms. [REDACTED] were to relocate to Peru she would be unable to obtain sufficient treatment either due to lack of availability, insurance or sufficient income to afford the necessary medications. The documentation reflects that as a result of lack of sufficient treatment there would be a high likelihood that Ms. [REDACTED] would relapse and require hospitalization without the necessary medication. As such, the hardships the applicant's spouse would experience upon accompanying the applicant to Peru constitute extreme hardship. However, the AAO finds that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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 an 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.