

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

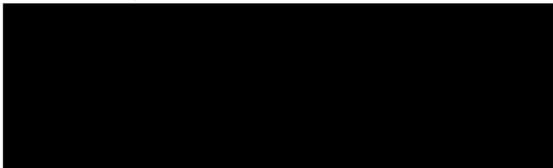
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

713

PUBLIC COPY



FILE:



Office: LIMA, PERU

Date: APR 24 2007

[consolidated therein]

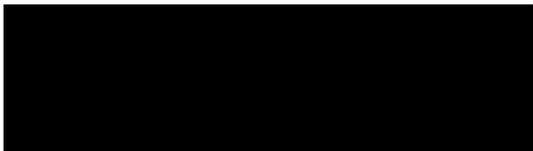
IN RE:



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.

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 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 his last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen. 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 his wife and child.

The Acting 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 Acting Officer in Charge*, dated March 4, 2004.

On appeal, the applicant, through counsel, asserts that the "officer that made the decision in this matter wrongfully denied it stating that the applicant did not show extreme hardship to his US citizen wife and US citizen child." *Attachment to Form I-290B*, filed April 1, 2004.

The record includes, but is not limited to, an affidavit from the applicant's wife, medical records for the applicant's wife, a psychological evaluation of the applicant's wife and son, various tax documents and utility bills, letters of recommendations from the applicant's neighbors and family, and documents from the applicant's court proceedings before the Denver, Colorado, Immigration Court and the Board of Immigration Appeals (BIA). 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 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 AAO notes that the record contains several references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record is unclear on when the applicant entered the United States, but he apparently entered sometime in the 1980's. On January 25, 1992, the applicant and [REDACTED] had their son, [REDACTED]. On October 27, 1993, the applicant filed an Application for Asylum (Form I-589). On April 20, 1995, the immigration service referred the Form I-589 to an immigration judge. On December 6, 1995, an immigration judge denied the applicant's Form I-589, but granted him voluntary departure to Peru. On December 22, 1995, the applicant appealed the immigration judge's decision to the BIA. On May 16, 1996, [REDACTED] the mother of the applicant's son, became a naturalized United States citizen. On January 15, 1997, the BIA dismissed the applicant's appeal, ordering the applicant to voluntarily depart the United States within 30-days. The applicant and [REDACTED] married in Salt Lake City, Utah, on April 10, 2001. On May 9, 2001, a Warrant of Deportation was issued for the applicant. On July 17, 2001, the applicant filed a Form I-130, which was approved on December 17, 2001. On June 23, 2003, the applicant was removed from the United States to Peru. On or about November 18, 2003, the applicant filed a Form I-601, which the Acting OIC denied on March 4, 2004, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until June 23, 2003, 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 his June 23, 2003 removal 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 himself 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 BIA 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.

The applicant's wife asserts that she would face extreme hardship if she relocated to Peru in order to remain with the applicant. The applicant's wife states that since the applicant was removed to Peru, she and her son "have suffered terribly in his absence. [The applicant] was a great help and comfort to both of us, and [they] are having a terrible time trying to survive without him." *Affidavit by* [REDACTED], dated November 28, 2003. She claims that she has health problems, including having heart surgery. *Id.* The AAO notes that the applicant submitted medical records establishing that she has various health problems, including abdominal pain, menopause-type symptoms, insomnia, allergies, and pain in her arm. However, she failed to provide any medical documentation regarding her heart condition or evidence of the heart surgery. The applicant's wife states she is "suffering from depression." *Id.* [REDACTED], a Certified Physician Assistant, stated the applicant's wife "currently suffers from anxiety/depression due to her husband being recently deported to Peru." *Letter by* [REDACTED], dated August 29, 2003. The AAO notes that [REDACTED] failed to sign the letter and he has not demonstrated that he is qualified to make psychological determinations. [REDACTED], a Clinical Social Worker, stated "the trauma of separation from [the applicant] appears to be a factor in the rise of [the applicant's wife's] blood pressure and depression levels, which has also influenced continuing problems with infections." *Letter by* [REDACTED], *Community Health Centers, Inc.*, dated September 9, 2003. Dr. [REDACTED] states that the applicant's wife is "acutely depressed. She has been traumatized by the separation from her husband." *Psychological Evaluation by* [REDACTED] page 4, dated March 22, 2004. Dr. [REDACTED] diagnosed the applicant's wife with "active symptomatology of posttraumatic stress disorder, primarily manifested in severe depression, but also with secondary features of anxiety." *Id.* at 5. Dr. [REDACTED] stated the applicant's wife needs "specialized psychiatric attention, which [she] is currently receiving and would not be available to [her] in Peru." *Id.* at 9. The applicant's wife states all her family is in the United States, besides the applicant. *Id.* at 2. The AAO notes that the applicant's wife is a native of Peru, who spent all of her formative years in Peru, and speaks Spanish. The applicant's wife states she has "had to struggle with being the sole caretaker of [their] son, work at the restaurant, and take care of the household chores." *Affidavit by* [REDACTED]. The applicant's wife claims that when the applicant was in the United States, he worked full-time but helped her in the restaurant, helped their son with his homework, picked him up from school, drove him to soccer practice, and watched over him. *Id.*

The AAO finds that, based on her history of emotional and psychological problems, the applicant has demonstrated extreme hardship to his wife if she remains in the United States without the applicant; however, it has not been established that the applicant's wife could not join the applicant in Peru, which is her native country. Since the applicant's wife's depression is primarily caused by the separation from the applicant, if the applicant's wife moves to Peru then the depression would presumably no longer be an issue. Additionally, as noted above by [REDACTED], the applicant's wife's health conditions are related to her separation from her husband, so if she joins the applicant in Peru, then it would logically follow that her health problems would not be an issue, either. The applicant's wife would not be alone in Peru, since the

applicant and his family reside there. The AAO notes that there is no evidence that the applicant's son, who is fifteen years old, could not adjust to the culture of Peru. In addition, the applicant's son writes and speaks Spanish. The applicant's wife owns a restaurant with her brother and states if she "were forced to leave the United States (to join [the applicant] in Peru), [she] would lose [her] sole and probably only possible source of income." *Affidavit by* [REDACTED]. She states that because of her "age and poor health, it would be nearly impossible for [her] to gain any kind of employment in Peru." *Id.* The applicant's wife failed to provide any evidence that she could not obtain a job in Peru or evidence that she could not receive medical treatment in Peru for her depression. The applicant's wife is trained as a nurse, was involved in several businesses in Peru, and has owned her own business since 1999. Additionally, beyond generalized assertions regarding country conditions in Peru, the record fails to demonstrate that the applicant could not obtain a job in Peru or that he has no transferable skills that would aid him in obtaining a job in Peru.

The AAO notes that the applicant's son submitted a letter on December 11, 2006, regarding his father's immigration status. In the letter, the applicant's son states "[REDACTED] has been helping [them] and she's the one that told us [the applicant] had domestic violence and that's the only thing that's holding him back." *Letter from* [REDACTED] filed December 11, 2006. After a thorough review of the applicant's record, there is no evidence that the applicant has been charged with any crimes of domestic violence. The applicant was removed from the United States because he failed to adhere to an order of voluntary departure issued by an immigration judge and the BIA. Additionally, the applicant is inadmissible to the United States because he unlawfully remained in the United States for a period of more than one year.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure, and has endured, hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she were to return to Peru.

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.