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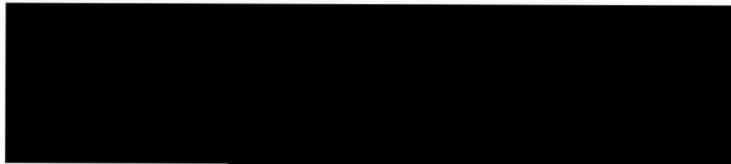
U.S. Department of Homeland Security  
20 Massachusetts Ave. NW Rm. 3000  
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U.S. Citizenship  
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FILE:



Office: LIMA, PERU

Date:

**DEC 29 2008**

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 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 ten years of her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish that the hardship her spouse would suffer rises to the level of extreme. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated October 25, 2006.

On appeal, the applicant's spouse submits additional evidence in regard to the extreme hardship he claims he is suffering as a result of the applicant's inadmissibility. *See Letter from Applicant's Spouse*, December 17, 2006.

In the present application, the record indicates that the applicant entered the United States under the Visa Waiver Program in May 2000, authorized to remain in the United States no more than 90 days. The applicant remained in the United States until April 15, 2006. Therefore, the applicant accrued unlawful presence from August 2000 until April 15, 2006, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her April 15, 2006 departure from the United States. Therefore, the applicant is 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.

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.

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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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, 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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Argentina or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record includes two statements from the applicant's spouse explaining the hardship he is experiencing because of the applicant's inadmissibility. The applicant's spouse states that he is suffering emotional, physical and financial hardship because of the applicant's inadmissibility.

The record includes a letter from the applicant's spouse's friend, [REDACTED] which states that he has noticed a change in the applicant's spouse's personality and self-esteem since he has been separated from the applicant. *Letter from [REDACTED]*, undated. [REDACTED] states that the applicant's spouse is falling into a depressed mood. *Id.* Although statements and observations from friends and family members are considered evidence for the purposes of establishing extreme hardship, a diagnosis of depressed mood or any mental health condition must be established by documentary evidence, e.g., a report from a licensed health care professional. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the statements made by [REDACTED] will be considered but are insufficient to establish the emotional reaction of the applicant's spouse to his separation from the applicant.

In his statement on appeal the applicant's spouse also states that he has been receiving outpatient treatment for stress-related chest pains due to being separated from the applicant and his current financial situation. The record includes a discharge summary from Riverview Medical Center, which states that the applicant's spouse was treated for chest pains on September 20, 2006 and prescribed a medication for his problem. *Riverview Medical Center Discharge Summary*, dated September 20, 2006. The discharge summary does not, however, indicate that the chest pains experienced by the applicant's spouse were related to stress. Neither does the record demonstrate that he is continuing to receive treatment for chest pains or that he continues to experience chest pains. The discharge summary also states that the applicant's spouse was asked to call the medical center during daylight hours for follow-up, but the record does not indicate that he did so.

In his initial statement, dated May 1, 2006, the applicant's spouse states that he will suffer extreme financial hardship because of his wife's inadmissibility. He states that he grosses \$80,000 a year as a mechanical engineer and process manager, and because of his strong performance has a good chance of being promoted. He states that he also has a car loan, student loans and is in the middle of finishing his Bachelor's degree at the New Jersey Institute of Technology. In his statement submitted on appeal, dated December 17, 2006, the applicant's spouse expresses further concern for his financial status. He states that he has had to take loans from his 401K Plan to cover bills and to pay for his visits to Argentina. On appeal, the applicant's spouse submits a document showing a breakdown of his finances from April to October 2006. The financial breakdown indicates that the applicant's spouse's income significantly decreased during this period and with that decrease in income he lost the ability to meet his monthly bill payments. The applicant's spouse also submits a notice of his gas being disconnected for nonpayment and a notice of default on his car loan, both dated in October 2006. The AAO notes that the record fails to address or document this apparent loss of income and that the applicant's spouse continues to report in his December 17, 2006 statement that he grosses \$80,000 a year. Without definitive documentation showing the applicant's spouse's annual income (e.g., a W-2 form, tax return, etc.), the AAO cannot make a determination that he would suffer financial hardship if the applicant's waiver application is not approved.

Furthermore, although the spouse states that he supports the applicant in Argentina, there is no documentary evidence in the record to indicate that his financial support is necessary. The record does not demonstrate that the applicant is unable to support herself or that conditions in Argentina prevent her from doing so. Therefore, the AAO finds that the hardships described in the current record, independently or in the aggregate, do not demonstrate that the applicant's spouse is suffering extreme hardship as a result of being separated from the applicant.

The AAO does find that the applicant has shown that her spouse would suffer extreme hardship as a result of relocating to Argentina. The AAO notes that the record indicates that the applicant's spouse's family resides in the United States. A native of Brazil, the applicant also expresses concern over not being able to speak Spanish fluently, not being able to find employment, and living in crowded conditions with the applicant's family. In his May 1, 2006 statement, the applicant contends that if he moves to Argentina to be with the applicant, he will lose all that he has worked so hard for. The AAO notes that the record indicates that the applicant's spouse owes more than \$50,000 on his student loans. The AAO finds that due to the spouse's family ties to the United States, his restricted ability to find employment in Argentina due to the language barrier and his resulting inability to pay back his debts if he relocates, the applicant's spouse would suffer extreme hardship as a result of relocating to Argentina.

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 removed.

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. The AAO notes that the record contains two letters of recommendation for the applicant and documentation showing that she was enrolled at Brookdale Community College while in the United States. However, 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 also acknowledges the applicant's spouse's complaints regarding the information received by the United States Citizenship and Immigration Service customer service hotline. The AAO notes that the hotline is not a source for resolving questions of procedural or substantive immigration law, but rather a tool to provide applicants with basic information regarding their applications.

In proceedings for an 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.