

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

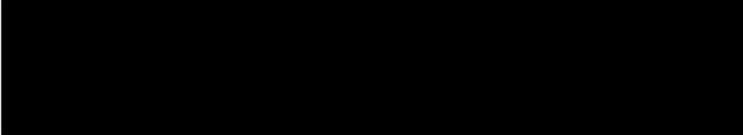
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

t13

**PUBLIC COPY**



FILE:



Office: LIMA, PERU

Date:

FEB 20 2008

IN RE:



PETITION: 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 PETITIONER:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Peru, was found inadmissible to the United States under 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. The applicant is the spouse of a U.S. citizen, and 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 remain in the United States with her husband and family.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband and family would suffer extreme hardship if she were required to remain in Peru, and submits additional documentation. The entire record was reviewed and considered in rendering 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she first entered the United States, without inspection, on December 11, 1999. The applicant did not depart the United States until

January 2, 2005, when she returned to Peru in order to process her permanent residency petition. The instant Form I-601 was filed on or around February 17, 2005.

The OIC found the applicant inadmissible based upon the five-year period of time that she was unlawfully present in the United States between December 1999 and January 2005. As she had resided unlawfully in the United States for more than one year and then sought admission within ten years of her last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or her son cannot be considered, except as it may affect the applicant's husband.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 alien 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. In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's husband is a forty-four-year-old citizen of the United States. He has been a United States citizen since 1989. He and the applicant have been married since March 30, 2004.

The applicant's husband has two children from his first marriage. Both are United States citizens. According to the applicant's husband, he has sole custody of both children and they receive neither economic nor emotional support from their birth mother.<sup>1</sup> Accordingly, the applicant, as their stepmother, assumed the role of primary caretaker for the children. The older child suffers from paranoid schizophrenia and requires a great deal of care and attention.

The record contains two affidavits from the applicant's husband. In the first affidavit, dated February 14, 2005, he states that his older son (whom he says suffers from paranoid schizophrenia) relies upon the applicant to take him to doctor appointments, help him with schoolwork, and help him with exercise. He states that the applicant is an outstanding wife and a great stepmother to his children.

In the second affidavit, dated August 15, 2005, the applicant's husband states that his older son is fully disabled and entirely dependent upon the family for his ongoing care:

[The applicant] became a new mother and caring adult for my son [name withheld] when she moved in with our family and home. She could help me with the care and needs of [the applicant's older son]. It is very hard to raise a family as a single working parent. It is almost impossible to do so with a child who is disabled because of a mental condition. With the love and support of [the applicant], my son enjoyed a safe and stable environment where we could investigate better medical treatments for his illness, and permit him to live a more normal life. Now that life is in great danger, and truly I fear for my son each and every day now. If something should happen to me, my son [name withheld] will have no one to care for him, to monitor his daily medications, and to be sure that he does not face the terrible misfortune that so many people live with who become homeless, or must be cared for in a facility. . . .

It is critical that [the applicant's husband's older son] live in a safe and stable home environment. His mental disability is made much worse by significant changes and complications to my family here. The loss of his new stepmother, and harm to my family are all very harsh [to him]. . . .

The applicant's husband also described the strain that separation from the applicant has caused:

---

<sup>1</sup> This statement has not been documented. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

I am also suffering now each day. I have been referred by our family doctor for a psychiatric consultation, based upon a diagnosis of fatigue, hypertension[,] and insomnia resulting from the tragedy.<sup>2</sup> If I fall ill, the entire life of my family will fail. . . .

The applicant's husband states that he is not a rich man. He works for the Orange County (California) Transit Authority, and states he cannot afford to maintain households in both Peru and the United States: "As it is, my savings have all been lost in this mess and the future now looks very bad for us all if my wife [the applicant] cannot return to us and our home here." Counsel supplements this statement on appeal, noting that the applicant's husband is currently using home equity to maintain households in both California and Peru.

The record also contains an August 14, 2005 affidavit from the applicant's husband's mother, who lives with the family. She states that the applicant's husband receives no help in raising his two sons from the boys' mother, and that the love and support of the applicant, their stepmother, is essential. She also states that she is herself getting older and that she also needs help and support from the family, too. Finally, she reiterates the applicant's husband's contention that the older son's paranoid schizophrenia is exacerbated by significant changes and complications.

Finally, the record contains an August 14, 2005 affidavit from the applicant's brother, who is also a physician at the University of California-Los Angeles Medical Center. The applicant's brother states the following:

[I]t is critical that [the older son], suffering from paranoid schizophrenia, be permitted to live in a safe, nurturing[,] and stable home environment. His mental disability is made much worse by significant changes and complications to his family here. The absence of [the applicant] exposes [the older son] to an extremely harmful psychological stressor. Such stressors have a very negative effect on paranoid schizophrenics and can result in disease progression and exacerbations. These complications will not only affect [the older son's] health and well-being, but also the wellbeing of the entire family. The loss of his stepmother could result in a further burden upon all concerned, including hospitalization or the need for live-in care at an enormous expense to my brother. . . .

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450

---

<sup>2</sup> An August 11, 2005 letter from [REDACTED], states that the applicant's husband is seeking therapy for, and taking medication to combat fatigue, hypertension, and insomnia.

U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.") In addition, the Ninth Circuit Court of Appeals has held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that this matter arises in Santa Ana, California, which is within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in this case and given the appropriate weight under Ninth Circuit law in the assessment of hardship factors.

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 wife will face extreme hardship if the applicant is refused admission. First, the AAO notes that the applicant has submitted no medical documents of any kind to support the assertion that her stepson suffers from paranoid schizophrenia. Nor is there any documentary evidence from any of the applicant's stepson's medical care providers regarding how well he responds to medication, how much care he requires, or how independently he is able to function. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The AAO also notes that the applicant and her husband had been married for less than one year at the time the waiver application was filed, and there is no information in the file as to how the applicant's husband was able to manage the family's affairs before the couple was married.

Nor has the applicant submitted any evidence beyond his own testimony to demonstrate that he would suffer extreme hardship if he relocated to Peru. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

As noted previously, United States 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 finds that the OIC properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the deportation or refusal of entry of a spouse. The applicant has submitted little evidence beyond the testimony of family members to establish extreme hardship. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.