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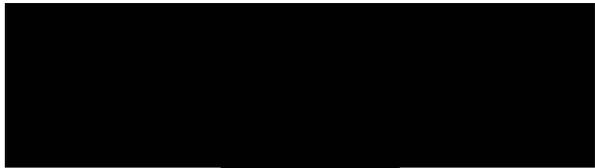
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: LIMA, PERU Date: **MAR 21 2008**

IN RE: Applicant: [Redacted]

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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, Lima, Peru, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). 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 46 -year-old native and citizen of Argentina who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record reflects that the applicant's spouse, \_\_\_\_\_ is a U.S. citizen born in New York in 1960. The applicant was admitted to the United States under the Visa Waiver program on March 27, 2001. She did not depart the United States until April 24, 2003, one month after her marriage to \_\_\_\_\_. The applicant seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The officer in charge denied her application for a waiver of inadmissibility, finding that she had failed to establish that her U.S. citizen spouse would face extreme hardship.

On appeal, the applicant claims that her spouse is experiencing extreme hardship because of their separation. In support of her appeal, the applicant submits a lengthy letter from her husband explaining, among other things, that his children (from a previous marriage) have been removed from his home by a state agency and that only with the applicant's return the children would return to his custody.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 officer in charge found the applicant inadmissible on the basis of the consular officer's conclusion that she had remained in the United States beyond her authorized period of stay, and therefore had accrued more than 365 days of unlawful presence. The record supports the finding, and the applicant does not dispute it.

The AAO therefore affirms the finding of inadmissibility and finds that the applicant is inadmissible as charged. The question remains whether she is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute.

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. 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).

The applicant’s husband, [REDACTED], is a 47-year-old native born U.S. citizen. He was married to the applicant on March 23, 2003 in Florida. The applicant has one teenage child from a previous relationship who resides with her in Argentina. The applicant’s husband has six children, from previous relationships. The applicant’s husband has traveled to visit her in Argentina. The record suggests that he owns a home in Florida, and is well-employed.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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 record suggests that the applicant's husband is reluctant to relocate to Argentina. As a U.S. citizen, he is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's husband's concerns in this regard are common to other individuals facing similar circumstances, and do not rise to the level of "extreme hardship." *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (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").

The AAO has considered the applicant's husband's hardship due to his separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). Although the AAO acknowledges the applicant's husband's claims that he would experience hardship if he continues to be separated from his wife, the AAO finds that his hardship is typical for any person in his circumstances and does not rise to the level of "extreme" as required by the statute.

The AAO has evaluated the applicant's husband's hardship claims individually and in the aggregate. The AAO finds that the applicant failed to establish extreme hardship to her 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).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.