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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 14 2008**

IN RE:

[REDACTED]

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:

[REDACTED]

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 Director, California Service Center. 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 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 ten years of his last departure from the United States. The applicant is married to a naturalized U.S. citizen spouse. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their two United States citizen children.

The Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Director*, dated March 27, 2006.

On appeal, counsel for the applicant asserts that the applicant's children and spouse have medical problems and that without her, the applicant's spouse would be unable to care for himself and the children. *Form I-290B*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant and her spouse; medical statements and records for the applicant's children and spouse; letters from friends; employment letters for the applicant's spouse; earnings statements and paystubs for the applicant's spouse; tax statements for the applicant and her spouse; utility bills; and rent statements. 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.

In the present application, the record indicates that the applicant was admitted to the United States in December 1987 on a visa. *Statement from the applicant and her spouse*, dated December 3, 2002. The record does not specify on what type of visa the applicant was admitted to the United States. On August 4, 1989 the applicant married her spouse who is now a naturalized U.S. citizen. *See marriage certificate; Naturalization certificate of the applicant's spouse*. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on February 10, 2000. *Form I-485*. On August 8, 2001 the applicant left the United States and traveled to Peru, thereby triggering the unlawful presence provisions of the Act. *Statement from the applicant and her spouse*, dated December 3, 2002. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until February 10, 2000, the date she filed the Form I-485. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of her August 8, 2001 departure 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 a violation of 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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship suffered by the applicant's children will be considered only to the extent that it affects the applicant's spouse. If 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Peru or 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.

If the applicant's spouse travels with the applicant to Peru, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Peru. *Naturalization certificate for the applicant's spouse*. The record does not address what family members, if any, the applicant's spouse may have in Peru. The applicant's spouse asserts that he is successfully employed in the United States, whereas in Peru he would not be able to obtain a well-paying job to enable him to support his family. *Statement from the applicant and her spouse*, dated December 3, 2002. There is nothing in the record to demonstrate that the applicant and her spouse would be unable to contribute to their family's financial well-being from Peru.

The applicant asserts that both of her United States citizen children have undergone thyroid surgery and continue to receive medical treatment. *Id.* While the AAO notes that the record includes medical documentation regarding the asthmatic conditions of the applicant's children and their history of immunizations and screenings (*See Statements from [REDACTED] FAAP, Medical Director, National Pediatric Center*, dated April 25, 2006 and November 5, 2002; *Medical records, National Pediatric Center*), there is no documentation from a licensed health professional regarding the surgeries and any follow-up care that may be required because of them. Although the applicant and her spouse assert that the medical treatment the children receive for their thyroid condition is not easily accessible and very expensive in Peru where medical care is not as well practiced in all areas as in the United States (*Statement from the applicant and her spouse*, dated December 3, 2002), the record does not include any published country conditions reports to support their assertions. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Counsel asserts that the applicant's children do not speak fluent Spanish and have only attended school in the United States which would make their adjustment to Peru extremely hard. *Attorney's brief*. The AAO notes that the applicant's children are not qualifying relatives in this particular case, and while as previously noted, the effect of a child's suffering upon a qualifying relative will be considered, there is nothing in the record that addresses how the hardship experienced by the applicant's children as a result of their health conditions would affect the applicant's spouse, particularly if the spouse resided in Peru.

The applicant also asserts that her spouse suffers from high cholesterol and heart problems and is on a strict diet which she oversees. *Statement from the applicant and her spouse*, dated December 3, 2002. The record, however, does not include sufficient documentation to establish that the applicant's spouse suffers from either of these conditions. While the AAO notes the medical test and reports for the applicant's spouse included in the record, no accompanying evaluation of these results is provided to explain them. The AAO also notes that medical documentation included in the record shows that the applicant's spouse has suffered from knee pain and has had polyps removed from his colon. *Medical records, Empire Imaging, P.C.*, dated April 28, 2006; *Medical records, City Hospital Center at Elmhurst*, dated September 27, 2004 and November 2, 2005. The AAO notes that the record does not demonstrate that the applicant's spouse needs follow-up care for these conditions, nor does the record show that such care, if needed, would be unavailable in Peru. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant and her spouse state that if they were separated from each other, the applicant's spouse would most probably not be able to care for himself and both of his children. *Statement from the applicant and her spouse*, dated December 3, 2002. As previously discussed, the record fails to establish that either the applicant's spouse or her children suffer from medical conditions that would prevent the applicant's spouse from being able to care for himself or his children in the applicant's absence. Apart from his two United States citizen sons, the record does not address what additional family members the applicant's spouse may have in the United States and whether there are other family members who could assist the applicant's spouse with the child caring responsibilities. The applicant's spouse and his children would suffer on a psychological level if they were separated from the applicant. *Id.* As previously noted, the applicant's children are not qualifying relatives in this particular case and any hardship they may suffer will be evaluated only in the context of its impact upon the applicant's spouse.

While the AAO acknowledges the difficulties of separation, 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 deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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 she 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.