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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H3

[REDACTED]

FILE: [REDACTED] Office: LIMA, PERU Date: **APR 30 2009**
(LPZ 2004 843 001)

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.

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

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 Bolivia 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 United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen and lawful permanent resident children.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated November 13, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; statements from the applicant's children; an unsigned statement; a social worker's report on the applicant's spouse; an electric bill; bills for merchandise purchases; car insurance cards; a listing of monthly expenses; published country conditions reports; and a Bolivian police clearance letter for the applicant. 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 entered the United States without inspection in January 1991 or 1994 or 1999¹ and voluntarily departed the United States, returning to Mexico in December 2005. *Consular Memorandum, Embassy of the United States of America, La Paz, Bolivia*, dated June 19, 2006; *Consular Memorandum Report of Interview*, dated June 16, 2006; *Form I-601, Application for Waiver of Grounds of Inadmissibility*. Regardless of whether he entered the United States in 1991, 1994 or 1999, the applicant accrued unlawful presence in excess of one year before departing the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 his children experience upon removal is not directly relevant to the determination as to whether she 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. 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

¹ The AAO notes that according to the Consular Memorandum Report of Interview, dated June 16, 2006 the applicant entered the United States without inspection in January 1991. According to the Consular Memorandum, dated June 19, 2006 written by the same Consular Officer who wrote the Consular Memorandum Report of Interview, the applicant entered the United States in 1994. In his decision denying the applicant's Form I-601 waiver, the Officer in Charge stated that the applicant entered the United States without inspection in January 1999. The record also includes the Form I-130 and the Form I-601, which state that the applicant entered the United States in January 1999.

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 whether she resides in Bolivia or the United States, as she is not required to reside outside 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 Bolivia, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Bolivia. *Naturalization certificate*. Two of the applicant's spouse's children reside in Bolivia and are attending medical and dental schools there. *Statement from [REDACTED]*, dated April 1, 2006. Counsel asserts that while the applicant and his spouse are currently in good health, it is likely that one or both of them may require medical attention in the future. *Attorney's brief*. He further states that the Officer in Charge neglected to account for the expenses that may be incurred in the future should any family member get sick, or the type of healthcare that would be available in Bolivia if the applicant's family resided there. *Id.* While the AAO acknowledges counsel's assertions, it notes that counsel is referring to a future possibility, not the present situation, as the record does not document a current medical condition for the applicant or his spouse. Furthermore, the record does not include documentation to demonstrate that the healthcare system in Bolivia would be unable to respond to any potential medical problems experienced by the applicant's spouse. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). According to [REDACTED], a Licensed Clinical Social Worker, the applicant's spouse supports three children who are attending graduate school in Bolivia and Puerto Rico. *Statement from [REDACTED]*, dated April 1, 2006. If she moves to Bolivia, there are no jobs for her. *Id.* The AAO observes that the record includes published country conditions reports that indicate that almost two-thirds of the people in Bolivia live in poverty. *Background Note: Bolivia, United States Department of State*, dated March 2006; See also *Bolivia, CIA World Factbook*, dated April 20, 2006. While the AAO acknowledges the poor overall economy in Bolivia as documented by the published reports, it also notes that the record indicates that the applicant and his spouse are well-educated, that the applicant's spouse has training and employment experience in accounting and that the applicant is an engineer. *Statement from [REDACTED]*, dated April 1, 2006. Accordingly, the AAO does not find the record to establish that the applicant's spouse would not have employment opportunities in Bolivia. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Bolivia.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Bolivia. *Naturalization Certificate*. Counsel notes that the applicant's spouse, daughters and grandchildren

all lawfully reside in the United States and have established a life in the United States that is far more prosperous, emotionally and financially, than the one they left behind in Bolivia. *Attorney's brief*. The AAO notes that the applicant's children and grandchildren are not qualifying relatives for the purposes of this case and that the record fails to document how any hardship the applicant's children or grandchildren may encounter would affect the applicant's spouse, the only qualifying relative in this case. The applicant's spouse states that if the applicant remains in Bolivia, she would have to raise their daughters on her own. *Statement from the applicant's spouse*, dated April 14, 2006. While the AAO acknowledges the statement of the applicant's spouse, it notes that according to the record, all three of the applicant's daughters are adults and that her sons are attending medical and dental schools in Bolivia. *Naturalization Certificate for [REDACTED]; Lawful Permanent Resident cards for [REDACTED] and [REDACTED]*, *Statement from [REDACTED]*

dated April 1, 2006. The applicant's spouse also states that it would be very difficult for her to support the applicant while he remains in Bolivia. *Statement from the applicant's spouse*, dated April 14, 2006. She also would be unable to visit him, as she does not have funds to travel to Bolivia on a regular basis. *Id.* The AAO observes that the record includes an electric bill, as well as bills for the purchases of a washer and a shadow box. *Electric bill; Brandsmart U.S.A. bill; Home Depot bill*. The record does not include any earnings statements, tax statements, W-2 Forms, or retirement statements for the applicant's spouse that would establish her financial situation in the United States. Moreover, as previously discussed, the AAO does not find the documentation included in the record to demonstrate that the applicant would be unable to contribute to his family's financial well-being from outside the United States. 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)).

The AAO notes that the Licensed Clinical Social Worker found the applicant's spouse to be extremely anxious and depressed since the applicant left. *Statement from [REDACTED]*, dated April 1, 2006. She further states that the current condition of the applicant's spouse causes significant distress and impairment in social, occupational, or other important areas of functioning. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter fails to state how many interviews of the applicant's spouse were conducted by the Licensed Clinical Social Worker or to discuss the bases on which she reached her conclusions. Furthermore, the social worker fails to provide a clinical diagnosis of the depression and anxiety she states is being experienced by the applicant's spouse or to discuss, with any specificity the type or extent of the impairment these conditions are causing. Accordingly, the submitted evaluation does not reflect the insight and elaboration required in a psychological evaluation, thereby rendering the Licensed Clinical Social Worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

While the AAO acknowledges the difficulties faced by the applicant's spouse, 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 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 her situation, if she remains in the United States, from that of other individuals separated as a result of removal. 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 his spouse if she 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 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.