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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H3

FILE:

Office: LIMA, PERU

Date:

JAN 22 2009

IN RE: Applicant:

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.

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).

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, and 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, pursuant to the record, entered the United States without inspection in 2001 and remained until February 2006, when he voluntarily departed the United States. The applicant was thus found to be 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. He 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 be able to reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 30, 2006.

In support of the appeal, the applicant submitted the following, *inter alia*: Form I-290B, Notice of Appeal (Form I-290B); a letter and translation from the applicant's U.S. citizen spouse, dated October 18, 2006; an evaluation from a licensed clinical professional counselor in regards to the applicant's spouse and step-children, dated November 13, 2006; support letters; and financial documentation. The entire record was reviewed and considered in rendering this decision.

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....

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 record contains numerous references to the hardships that the applicant's step-children, born in 1993, 1994 and 1995, will suffer if the applicant's waiver request is denied. Section 212(a)(9)(B)(v) of the Act provides that a waiver under 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. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or his step-children cannot be considered, except as it may affect the applicant's U.S. citizen spouse.

The applicant's spouse further asserts that she will suffer extreme emotional and financial hardship if the applicant is unable to reside in the United States due to his inadmissibility. As the applicant's spouse states:

I am going through turmoil due to fact that I am alone supporting my household and send money to my husband [the applicant]. My children are most of the time alone or with babysitters because I have to work long hours to keep up with the demands.

At this point I am suffering of anxiety attacks, lack of sleep and is affecting my health and work performance.... Right now I am concern if my husband is not here with us for the holydays [sic].... I would like very much to know when my husband will be able to enter the United States. I would like very much to end this nightmare....

Letter from [REDACTED] dated October 18, 2006.

With respect to the hardships referenced by the applicant's spouse, a letter has been provided by [REDACTED], Licensed Clinical Professional Counselor. As she concludes,

It is my professional opinion that [REDACTED] [the applicant's spouse] is very anxious and depressed to the point of making herself sick. She is suffering extreme hardship with the absence of her husband [the applicant]. She is counting on the immigration department's forgiveness to consider giving her husband a pardon and his permanent residency....

Letter from [REDACTED] Licensed Clinical Professional Counselor, dated November 13, 2006.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter appears to be based on a single contact between the applicant's spouse and the counselor. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse, nor a specific treatment plan for the depression referenced by [REDACTED], to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single contact, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the counselor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. As for the hardship referenced by the applicant's spouse with respect to her children due to their step-father's physical absence, it has not been established that their hardship is so extreme as to cause extreme hardship to their mother, the qualifying relative in this case.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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).

Regarding the financial hardship referenced by the applicant's spouse, the AAO notes that 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.”).

Although the applicant has provided a copy of a bank statement for a one-month period in 2006, indicating debits and credits, said statement does not reflect the complete financial picture as no information regarding the applicant spouse’s income and expenses, assets and liabilities has been provided. Nor does the record indicate what specific contributions the applicant made to the household prior to his departure from the United States in February 2006, approximately one year after marrying, to establish that his physical absence is causing extreme financial hardship to his spouse. It has also not been established why the applicant’s spouse’s first husband is unable to assist with the financial care of his three children, thereby alleviating the applicant’s spouse’s financial obligations. Finally, it has not been established that the applicant, a residential painter, is unable to obtain gainful employment abroad, thereby affording him the opportunity to assist his spouse with respect to the household finances. 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)). While the applicant’s spouse may need to make adjustments with respect to the family’s financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant’s spouse extreme hardship.

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant’s spouse is suffering extreme emotional and/or financial hardship due to the applicant’s absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant’s waiver request. Neither the applicant and/or the applicant’s spouse have addressed this criteria. The only reference with respect to this criteria is by [REDACTED] the licensed clinical professional counselor, who states as follows:

[REDACTED] [the applicant’s spouse] has thought of moving to Peru but cannot entertain such an idea. First, her children have visits with their father and she knows that he will not allow the children to move to Peru. Their children have their roots here; they have friends, school, school activities, church activities, medical insurance, etc. [REDACTED] can’t uproot them to move to a foreign country, and she will not let them live with their father due to the past of abuse. She herself has all her life here: friends, her work, her house. She knows that living in a foreign environment brings enormous challenges. She and her family emigrated from Mexico and she knows that it is not easy to adjust to a new culture....

Id. at 3.

No documentation has been provided to corroborate [REDACTED] assertions. As previously referenced, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. As such, it has not been established that the applicant's spouse will endure extreme hardship were she to relocate to Peru to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.