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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

FILE:

Office: LIMA, PERU

Date: MAY 01 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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 cursive script that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Lima, Peru, denied the instant waiver application. 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 native and citizen of Peru, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The record details a long and complex history of petitions, applications, appeals, and motions, including a previous Form I-130 filed by the applicant's previous wife. The instant case is concerned only with the appeal, filed February 14, 2007, taken from the January 18, 2007 denial of the Form I-601 waiver application that was based on the Form I-130 that the applicant's present wife filed on December 20, 2004, and which was approved on December 9, 2005. All of the evidence in the record will be considered, however, notwithstanding that it may have been submitted in connection with some other applicant or petition.

The OIC found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The OIC also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, counsel submitted additional evidence and stated that the evidence submitted demonstrates that failure to grant the waiver application would cause extreme hardship to the applicant's wife. Although counsel did not appear to contest the OIC's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

A Form I-589 Application for Asylum that the applicant signed on December 5, 1991 and submitted on December 11, 1991 indicates that the applicant entered the United States without inspection on August 17, 1991. Upon entrance, the applicant's presence was unlawful. It became lawful, however, upon submission of the asylum application, pursuant to section 212(a)(9)(B)(iii)(II) of the Act.

On July 19, 2002, the Board of Immigration Appeals (BIA) issued a decision denying the applicant's asylum application.

On February 21, 2003, however, the U.S. Court of Appeals for the Ninth Circuit acknowledged receipt of a motion and issued a temporary stay of deportation.

On September 22, 2004 the U.S. Court of Appeals for the Ninth Circuit denied the applicant's petition for review. The applicant's asylum petition was no longer pending and the applicant's presence in the United States then became unlawful.

On November 23, 2004, the applicant married his current wife.

On August 21, 2006, the applicant filed a motion with the BIA, which the BIA, on September 14, 2006, denied as untimely. That untimely motion did not, at any time, render the applicant's presence in the United States lawful.

In a note on a letter dated September 17, 2006, the applicant stated that, on July 18, 2006, he had departed the United States. The applicant had been unlawfully present from September 22, 2004 to July 18, 2006, a period greater than a year, then left the United States, and now seeks admission. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or any other relative, by blood or marriage, is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the

Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of 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).

Once 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).

The record contains an undated letter from the applicant’s brother-in-law. The applicant’s brother-in-law stated that the applicant is helpful to the applicant’s wife, but did not otherwise address how failure to approve the waiver application would constitute hardship to the applicant’s wife.

The record contains an undated letter from the applicant’s sister-in-law, [REDACTED] who stated that the applicant is very helpful to her family members and has a good relationship with them, but did not directly address the hardship that the applicant’s wife would suffer if the waiver application is not approved.

The record contains an undated letter from the applicant’s father-in-law, signed both by him and by the applicant’s mother-in-law. That letter reiterates that the applicant is very helpful to his wife’s family members, but does not otherwise address the hardship that would be occasioned to the applicant’s wife by denial of the waiver application.

The record contains an undated letter from the applicant’s wife. The applicant’s wife stated that the applicant serves her breakfast in bed, does the laundry, cooks dinner, and pays the bills, and that her life would not be the same without him. She further stated that she is studying to become a registered nurse.

The record contains a letter, dated January 27, 2006, in which the applicant stated that his wife needs his support while she is in college, and feels afraid and frustrated at the thought of his being away. He further stated that he has a small business that he wife would be unable to run, and that without him she would be unable to pay the mortgage on the house that they live in. On that letter, the applicant gave his address as [REDACTED] in Los Angeles, California.

On a G-325A Biographic Information form in the record, the applicant stated that he lived at [REDACTED] in Los Angeles, California, from April 1992 until January 2004; and at [REDACTED] also in Los Angeles, from January 2004 until he signed that letter on September 14, 2006. The AAO notes that the G-325A does not support the applicant's assertion that he and his wife lived at [REDACTED] on January 27, 2006.

The record also contains a G-325A Biographic Information form signed by the applicant's wife. The applicant's wife indicated that she had lived at [REDACTED] in Bell, California since November 1986, and continued to live there through September 14, 2006, the date she signed that letter. The AAO notes that the applicant's wife's G-325A does not support the applicant's assertion that his wife lived with him at [REDACTED] or even that she lived with him elsewhere.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record contains a letter, dated February 19, 2007, from [REDACTED], a psychologist. That letter states that [REDACTED] interviewed the applicant's wife and mother-in-law on February 14, 2007 ". . . to assess the hardship and psychological impact on [the applicant's wife] due to the forced separation from [the applicant]." The letter was clearly, therefore, produced for use in this proceeding as evidence of hardship.

[REDACTED] stated that the applicant was previously attending college full-time, but now lives with her parents, works full-time, and attends college part-time.

[REDACTED] stated that the applicant has various psychological symptoms, including difficulty concentrating, compulsive thoughts, lack of energy, poor memory, irritability, frequent crying, anxiety, depression, loss of temper, weight loss, fear that she may become violent, and insomnia. She added that the applicant's wife denied having had any of these symptoms when she was living with the applicant. [REDACTED] stated that the interview and two psychological assessment measures administered reveal that the applicant is ". . . suffering from high anxiety and severe depression, specifically related to being separated form [sic] her husband."

In closing, ██████████ stated that the applicant's wife's well-being is being severely compromised and that her psychological state will worsen if the applicant is not permitted to return to the United States.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the psychologist and the applicant's wife and mother-in-law. The record fails to reflect an ongoing relationship with the applicant's wife or any history of treatment for the disorders suffered by the applicant's wife. Moreover, the conclusions reached in the submitted report, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering ██████████ findings speculative and diminishing the report's value in determining extreme hardship.

As was noted above, the BIA placed the applicant under an order of deportation on July 19, 2002. The U.S. Circuit Court of Appeals denied his petition for review on September 22, 2004. On November 23, 2004, the applicant married his present wife.

The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

Further, other than the February 19, 2007 letter of ██████████ the psychologist, the evidence submitted contains very few references to hardship that would be occasioned to the applicant's wife if the waiver application is not approved. The applicant's brother-in-law stated that the applicant is helpful to his wife. In her own letter, the applicant's wife detailed some of the assistance the applicant renders to her. The AAO does not doubt that the applicant's wife would miss his help. The applicant's father-in-law and sister-in-law stated that the applicant is very helpful to his wife's family. In the applicant's absence, the applicant's wife might be obliged to render some of that assistance herself.

The applicant's wife also stated that the applicant pays the bills, and the applicant stated that his wife needs his support while she is in college. No independent evidence was provided, however, to substantiate that assertion. Although the statements by the applicant and his spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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 record does not show the applicant's wife's income, her expenses, or whether she is able to obviate some of her expenses.

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 faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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). 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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.