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



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

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FILE:



Office: LIMA, PERU

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**MAY 19 2009**

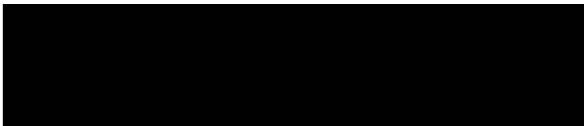
IN RE:



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:



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

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated November 16, 2006.

On appeal, counsel states that the decision was an abuse of discretion and that the submitted evidence was weighed incorrectly. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the applicant's son; school report cards and certificates for the applicant's son; a statement from one of the applicant's grandchildren; calling cards; published country conditions reports; a statement from the applicant; an apartment lease; bank statements; and a Peruvian 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 May 1985 and remained until he was removed in March 2004. Consular Notes, Embassy of the United States of America, Lima, Peru, dated May 15, 2006. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he was removed from the United States in March 2004. As the applicant is seeking admission within ten years of his 2004 removal, he is 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 he 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 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 Peru 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 joins the applicant in Peru, the applicant needs to establish that his spouse will suffer extreme hardship. Counsel asserts that in order to reunite with the applicant, the applicant's spouse would need to relocate to an underdeveloped and impoverished country. *Attorney's brief*. He further asserts that this would severely affect the family's financial situation,

the future opportunities of her son in the United States, and she would then be separated from her daughters and grandchildren. *Id.* The AAO notes that country conditions reports state that the minimum wage in Peru did not provide a decent standard of living for many families. *Peru, Country Reports on Human Rights Practices – 2006, U.S. Dept. of State*, dated March 6, 2007. While the AAO acknowledges this information, it notes that there is nothing in the record to show that the applicant or his spouse would be limited to employment paying the minimum wage or less. Furthermore, the record does not document the types of expenses the applicant and his spouse would have in Peru. Additionally, the applicant's son is not a qualifying relative for the purposes of this case and the record does not document how any hardship he might encounter would affect his mother, the only qualifying relative in this case. While the AAO acknowledges that separation from her daughters and grandchildren would result in emotional hardship for the applicant's spouse, the record fails to distinguish her emotions upon relocation from those experienced by others separated from loved ones as a result of removal. When looking at the record before it, the AAO is unable to find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. Counsel notes that the entire immediate family of the applicant's spouse lives in the United States. *Attorney's brief.* The applicant's spouse states that being separated from the applicant has affected her family economically and spiritually, and that she has been suffering severe depression. *Statement from the applicant's spouse*, dated March 27, 2007. While the AAO acknowledges these statements, it notes that the record fails to include a written analysis or evaluation from a licensed healthcare professional documenting the mental health condition of the applicant's spouse. 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 states that the applicant's spouse is under great financial stress working to support her child in the United States and the applicant in Peru, as the financial opportunities are very minimal in Peru. *Attorney's brief.* As previously noted, the record includes published country conditions reports documenting that the minimum wage in Peru does not provide a decent standard of living for many families. *Peru, Country Reports on Human Rights Practices – 2006, U.S. Department of State*, dated March 6, 2007. While the AAO acknowledges the economic situation in Peru, it notes that there is nothing in the record to show that the applicant would be limited to employment paying the minimum wage or less. The record also does not include tax statements, earnings statements or Forms W-2 for the applicant's spouse showing proof of her income in the United States. Furthermore, while the record includes an apartment lease from 1992, there is no other documentation in the record, such as utility bills, telephone bills, or current mortgage or rent statements, showing the expenses of the applicant's spouse. Again, 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 applicant's spouse states that she and her children cannot accustom themselves to not being with the applicant. *Statement from the applicant's spouse*, undated. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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 removed. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her 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.

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.