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FILE:

Office: SAN FRANCISCO, CA

Date: AUG 28 2007

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. 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 10 years of his last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his naturalized U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated July 23, 2004.

On appeal, the applicant asserts that he has demonstrated that his spouse would suffer extreme hardship if he were removed from the United States. *Form I-290B*, dated August 8, 2004.

In support of these assertions, the applicant submits a brief. The record also includes, but is not limited to, Peruvian medical records for the applicant's father; reports on Attention Deficit Hyperactivity Disorder; a report on health care in Peru; a letter from the applicant's spouse; employment letters for the applicant and his spouse; and tax statements for the applicant's spouse. 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 gained admission to the United States on April 14, 2001 with a B-2 visa valid until October 13, 2001. *See copy of the applicant's passport with admission stamp; Form I-94 card.* The applicant filed a Form I-485, Application to Adjust Status on July 11, 2003. The applicant remained in the United States until his departure on December 3, 2003. *Form I-601.* The applicant was paroled back into the United States on December 29, 2003. *Form I-512, Authorization for Parole.* The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized 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 [redacted] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from October 14, 2001, the date he was no longer in valid immigration status, until July 11, 2003, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his December 3, 2003 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien or other family members experience upon separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except as it may affect the qualifying relative. 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).

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 she resides in Peru or the United States, as she 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 his spouse will suffer extreme hardship. Although the record does not address what family members the applicant's spouse may have in Peru, the AAO observes that the applicant's spouse is a native of Peru. *See naturalization certificate.* The applicant's spouse stated that she has become an interpreter in the United States and would lose this job if she had to relocate to Peru. *Statement from the applicant's spouse; employment letter for the*

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applicant's spouse. While the AAO recognizes that relocation may negatively affect her career, the record does not demonstrate that the applicant's spouse would be unable to secure other employment in Peru or that, given her language abilities and experience as an interpreter she would not be able to continue working as an interpreter. The applicant's spouse also asserted that she could not move to another country, as her children from a previous marriage were born in the United States and would lose their relationship with their father. *Statement from the applicant's spouse.* The AAO notes that the children are not qualifying relatives in this particular case and the record does not indicate how the children's separation from their father would affect their mother. The applicant states that one of his stepchildren has Attention Deficit Hyperactivity Disorder and receives treatment through regular visits with a psychologist and prescription medicine. *Applicant's brief.* The AAO notes that the record fails to include documentation from a licensed health professional confirming the applicant's statements. The record also does not indicate how the child's health condition directly affects the applicant's spouse, the qualifying relative in this case. When looking at the aforementioned factors, the AAO does not find that the applicant 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. The applicant's spouse stated her children from a previous marriage are very close to the applicant and they would feel a great loss if the applicant were not living with them. *Statement from the applicant's spouse.* 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. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). Furthermore, as previously discussed, the applicant's stepchildren are not qualifying relatives in this particular case. The applicant claims that if he returned to Peru, the family could end up on welfare. *Applicant's brief.* The AAO observes that the record does not demonstrate that the applicant would be unable to secure employment in Peru and contribute to his family's financial well-being. *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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not demonstrate that her situation, if she remains in the United States, would be different than that of other individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, individually and in the aggregate, 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 spouse 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.