

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Massachusetts Ave. NW, Rm. 3000  
Washington, DC 20529



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

**PUBLIC COPY**



H4

FILE:



Office: LIMA, PERU

Date:

**AUG 29 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:



**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 Acting Officer-in-Charge, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 10 years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he is seeking a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated November 8, 2004.<sup>1</sup>

On appeal, the applicant asserts that the acting officer-in-charge did not consider the evidence submitted and the denial of the waiver was an abuse of discretion. *Form I-290B*, received December 7, 2004.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, medical records for the applicant's spouse, a psychosocial evaluation for the applicant's spouse, letters of support for the applicant, money wire receipts and information on conditions in Bolivia. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1989, applied for asylum (which was subsequently denied), was granted voluntary departure on January 10, 1992 and failed to depart, and was removed in August 2002. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his removal in August 2002. The 10 year bar was triggered by the applicant's departure from the United States. Therefore, the applicant 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.

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-

....

---

<sup>1</sup> In the Form I-601 decision, the acting officer-in-charge also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, as a matter of discretion. The AAO notes that the Adjudicator's Field Manual states that the Form I-212 should not be adjudicated until the Form I-601 decision is final. As there is not a final decision until the appeals process is complete, the acting officer-in-charge's decision on the Form I-212 will be withdrawn.

(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.

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. 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. These factors include the presence of lawful permanent resident or U.S. 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Bolivia or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Bolivia. The record reflects that the applicant's spouse is originally from Peru and has lived in the United States for approximately 28 years. See *Psychosocial Evaluation*, at 1, dated December 21, 2004. There is no indication that she has any ties to Bolivia other than the applicant. The applicant's spouse states that the applicant cannot find a job which pays enough to support him. *Applicant's Spouse's Statement*, at 1, dated December 8, 2003. The record includes numerous money wire receipts for money sent by the applicant's spouse to the applicant.

In addition, a UNICEF report reflects that 59 percent of the population of Bolivia lives in poverty and about 25 percent of the population are in conditions of extreme poverty. *UNICEF Article, Situation of Poverty in*

*the Country*, <http://www.unicef.org/bolivia/en/imagenes.pobreza.htm> (December 29, 2004). The record reflects that the applicant's spouse may face financial hardship, however the record does not include specific evidence that the applicant has been unable to obtain employment in Bolivia in order to support himself and his spouse.

The applicant's spouse states that she was sick during her last trip to Bolivia, she had shortness of breath due to the elevation, and the doctor told her to return to the United States due to her health. *Applicant's Spouse's Statement*, at 2. The applicant's spouse's counselor states that she is unable to join her husband in Bolivia due to the high altitudes since she has heart problems, she has a hard time breathing in Bolivia and a recent trip to Bolivia confirmed that she would live in poverty if she returned to Bolivia. *Psychosocial Evaluation*, at 1-2. The AAO notes that the record does not include evidence of the applicant's spouse's specific heart problems, but her counselor states that the applicant's spouse's father and uncle died of heart attacks which indicates a family history of heart problems. *Id.* at 2.

Counsel states that the applicant's spouse attempted suicide when the applicant was deported, she has been hospitalized in a county psychiatric facility, she has been diagnosed with major depressive disorder by a psychiatrist, she requires medication and ongoing treatment, and two health professionals mention the applicant's deportation and the subsequent emotional and financial turmoil as major stressors causing this condition. *Brief in Support of Appeal*, at 7-8. The record includes medical records and health professional letters that substantiate counsel's claims and that reflect that she has been seeking medical assistance for depression for over two years. The record indicates that separation is the main source of the applicant's spouse's depression; however, her reduced economic status is also mentioned as a life stressor. *Psychosocial Evaluation*, at 1. As discussed above, the record indicates that the applicant's spouse may experience a reduced economic status which could cause significant mental health problems. However, the AAO places substantially more weight on the emotional hardship that could result from a suspension of the applicant's spouse's ongoing treatment and the relationship with her treating physician. Based primarily on the applicant's spouse's lack of ties to Bolivia, her long period of residence in the United States and the relevant mental health issues, the AAO finds that the applicant's spouse would face extreme hardship upon relocation to Bolivia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse felt compelled to take her life on more than one occasion, she lost their business as a result of the applicant's deportation, and she is surviving on minimal income while attempting to pay the couple's debts and support the applicant in Bolivia. *Brief in Support of Appeal*, at 4. The record includes substantiating evidence of the applicant's spouse's income, her debts and relatively substantial payments from the applicant's spouse to the applicant. As discussed above, counsel states that the applicant's spouse has been hospitalized in a county psychiatric facility, she has been diagnosed with major depressive disorder by a psychiatrist, she requires medication and ongoing treatment, and two health professionals mention the applicant's deportation and the subsequent emotional and financial turmoil as major stressors causing this condition. *Id.* at 7-8. The record includes medical records and health professional letters which substantiate counsel's claims. Considering the unique financial and medical hardship, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's unlawful entry and presence, failure to timely depart the United States pursuant to the voluntary departure order and four DUI convictions from 1990 until 1992.

The favorable factors include the presence of the U.S. citizen spouse, the applicant's lack of a criminal record within the past fifteen years, extreme hardship to his spouse and the applicant's good character, as evidenced by statements in the record.

The AAO finds that the applicant's violations are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.