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FILE:



Office: LIMA, PERU

Date: MAR 08 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.

Robert P. Wiemann, 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 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 is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and United States citizen child.

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 April 17, 2006.

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

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse, dated May 1, 2006 (two statements) and February 2, 2006; a statement from the applicant, dated February 2, 2006; and a statement from [REDACTED], ACSW, LICSW, dated September 6, 2005. 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 on August 21, 2001. *Form I-601*. He departed the United States on January 14, 2006. *Statement from the applicant's spouse*, dated May 1, 2006. The applicant accrued unlawful presence from August 21, 2001 until May 1, 2006, the date he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his May 1, 2006 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 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's child or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant 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 removed. 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 qualifying relative must be established in the event that she resides in Bolivia 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 Bolivia, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Biographic information for the applicant's spouse (Form G-325A)*. She has no relatives or friends in Bolivia, nor does she have any emotional, cultural or religious ties there. *Statement from the applicant's spouse*, dated May 1, 2006. The applicant's spouse does not speak Spanish. *Statement from [REDACTED]*, ACSW, LICSW, dated September 6, 2005. According to [REDACTED] life in Bolivia will be much different, and just the adjustment to the move brings with it enormous stress on the family, particularly the applicant's spouse. *Id.* The applicant and his spouse will experience the problems with a much lower level of medical care. *Id.* The quality of life is similarly diminished because of the political turmoil, rampant unemployment, and lack of public safety. *Id.* While the AAO acknowledges the statements made by [REDACTED], it notes that the record fails to include published country condition reports supporting such assertions. The applicant's spouse is currently employed as a first grade teacher. *Statement from the applicant's spouse*, dated May 1, 2006. The applicant's spouse stated that it would be virtually impossible to find a job similar to that which she currently holds. *Id.* The AAO notes that while the financial impact of

departure from this country is to be considered when evaluating extreme hardship, the applicant's spouse is not required to obtain a similar job in a foreign country. There is nothing in the record that shows the applicant or his spouse would be unable to find employment in Bolivia in order to support their family. The record also fails to demonstrate the expenses that the applicant and his spouse would have. The applicant's spouse stated that if she were to live in Bolivia, she would have to send her son to a school in a country which the opportunity for higher education is very rare and she would not want to expose her son to that kind of situation. *Id.* The record fails to include published country condition reports supporting the applicant's spouse's assertions regarding the educational opportunities in Bolivia. Furthermore, the applicant's child is not a qualifying relative in this particular 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 Bolivia.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the family of the applicant's spouse, including her parents and siblings, live in the United States. *Form G-325A for the applicant's spouse; statement from the applicant's spouse*, dated May 1, 2006. The applicant's spouse suffered from depression from 1997-1999 due to her demanding job, health issues with her father, and the death of her grandfather. *Statement from [REDACTED] ACSW, LICSW*, dated September 6, 2005. In a discussion that [REDACTED] had with the applicant's spouse, he saw her reduced to tears at the mention of the potential separation from the applicant. *Id.* He stated that it is not possible to render a judgment about the significance of this because most persons who are facing deportation and the separation from loved ones report similar experiences. *Id.* He further noted that it will only be with the passage of time that the significance of this will be understood. *Id.* The AAO finds that the input of any mental health professional is respected and valuable, and concurs with the therapist's finding that it is premature to render a judgment regarding the mental health of the applicant's spouse. The AAO notes that the submitted letter is based on a single interview between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the applicant's spouse. 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 inconvenience and hardship experienced by the families of most aliens being deported. 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 deportation or exclusion and does not rise to the level of extreme hardship. 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 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)(i)(II) 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.