U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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MAY 08 2007

FILE: [redacted] Office: LIMA, PERU Date:

IN RE: [redacted]

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

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), Lima, Peru. 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 Chile 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, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting to a consular officer that he had ever visited the United States, in order to obtain an immigration benefit. The record reflects that the applicant is the spouse of a naturalized United States citizen and that he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated August 22, 2005.

On appeal, the applicant's wife asserts that she will suffer extreme hardship if her husband is denied admission into the United States. *Form I-290B*, filed September 23, 2005.

The record includes, but is not limited to, a brief and letters from the applicant's wife, and various medical documents and bills for the applicant's wife's sister, brother-in-law, and nephew. The entire record was reviewed and considered in arriving at 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-
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> (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 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, 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.

...

(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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

...

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The AAO notes that the record indicates that the applicant entered either in August 2001 or December 2002. If the applicant entered the United States in December 2002, he would be inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days, and he would be barred from seeking admission within three years of the date of his departure, which has now passed. If the applicant entered the United States in August 2001, he would be 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 one year or more, and he would be barred from seeking admission within ten years of the date of his departure. The AAO finds that it is unclear whether the applicant entered the United States in August 2001 or December 2002. If the applicant is able to provide evidence of a December 2002 arrival, he will no longer be inadmissible under section 212(a)(9)(B) of the Act. However, the AAO finds the applicant clearly inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting to a consular officer that he had ever visited the United States, in order to obtain an immigration benefit. As this is a permanent bar, his other inadmissibility ground is irrelevant.

In the present application, the record indicates that on December 21, 2002, the applicant was arrested in Alexandria, Virginia, for driving while intoxicated. On January 7, 2003, the applicant pled guilty to the charge of driving while intoxicated. In November 2003, the applicant departed the United States. On September 22, 2004, the applicant married [redacted] a naturalized United States citizen, in Chile. On September 24, 2004, the applicant filed a Form I-130, which was approved. On October 19, 2004, the applicant applied for a CR-1 immigrant visa and at the interview with the consular officer, the applicant claimed that he had never visited the United States. On February 2, 2005, the applicant filed a Form I-601. On August 22, 2005, the OIC denied the applicant's Form I-601, finding that the applicant misrepresented that he had ever visited the United States, he accrued more than 365 days of unlawful presence, and failed to establish extreme hardship would be imposed on his spouse. The OIC stated the applicant entered the United States in August 2001 and remained until November 2003, without seeking an extension of stay.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act. A waiver under section 212(i) 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. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 applicant's wife asserts that she would face extreme hardship if she relocated to Chile in order to remain with the applicant. The applicant's wife states "[f]or the past eight years [she has] been under the medical care of Dr. [redacted]..for an under-active thyroid (hypothyroidism)...[she has] monthly appointments to with [her] doctor to monitor [her] thyroid; [she] also get[s] a monthly prescription for medication and [she] get[s] blood work done twice a year." *Brief from* [redacted] filed October 20, 2005. The applicant's wife claims that her medical insurance, through her job, covers her medical appointments and prescriptions, and if she moved to Chile, she would lose her medical insurance. *Id.* The AAO notes that the applicant's wife provided general information on hypothyroidism, but failed to provide any medical documentation from a physician regarding her medical condition. The applicant's wife claims that if she joins her husband in Chile, she will lose her retirement savings that she has with her job. *Id.* Additionally, she would not be able to contribute to her social security retirement if she is not working in the United States. *Id.* The applicant's wife states she is assisting "three family members who are undergoing extreme medical illness [sic]" who without her help, would not be able to attend their doctor's appointments, chemotherapy and radiation therapy treatments, and pick up their prescriptions. *Id.* The AAO finds that evidence in the record establishes that the applicant's sister suffers from Lymphoma, her brother-in-law suffers from Thyroid cancer, and her nephew

suffers from Ulcerative Colitis. The applicant's wife states her parents are elderly and cannot help with the care of their daughter, son-in-law, and grandson. They also suffer from medical problems; however, the applicant's wife resides with them and is "able to take care of their everyday needs." *Id.* The applicant's wife states the applicant has not secured employment in Chile, so she is financially supporting him. *Id.* She claims that if the applicant is admitted to the United States, the applicant could help with her brother-in-law's business, and help her and her family. *Letter from* [redacted], dated November 29, 2004. The applicant's wife states that the thought of leaving her family to move to Chile, "causes [her] great mental hardship." *Brief from* [redacted], *supra.*

The record establishes that the applicant's spouse would suffer extreme hardship if she joins the applicant in Chile, being separated from her family and her familial caretaking duties. However, the applicant did not establish that his wife would suffer extreme hardship if she stays in the United States without the applicant. The applicant's wife has been living without the applicant since he departed the United States in November 2003, and it has not been established that she cannot get along without him. The applicant's wife states she is financially supporting the applicant in Chile; however, there was no evidence submitted establishing that the applicant has ever contributed financially to his wife, so it does not appear that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant. Additionally, the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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)(6)(C) 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.