U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LIMA, PERU Date: APR 23 2008

IN RE: [redacted]

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.

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 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 her last departure from the United States. The applicant is married to a U.S. citizen spouse. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and two U.S. citizen children.

The Officer-in-Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer-in-Charge,* dated March 7, 2006.

On appeal, the applicant asserts that she has demonstrated that her qualifying relative would suffer extreme hardship if her waiver request were denied. *Form I-290B; Statement from the applicant*, dated April 8, 2006.

In support of these assertions, the record includes, but is not limited to, statements from the applicant; statements from the applicant's spouse; and a letter from the Peruvian police. 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-
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> > . . . .
> >
> > (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 was admitted to the United States on June 20, 1991 with an A-2 visa valid for duration of status. *Form I-94.* The applicant and her parents filed for asylum and withholding of deportation, and an immigration judge denied their case on August 2, 1995. *Order of the Immigration Judge, Executive Office for Immigration Review.* The applicant and her family appealed the decision and on October 7, 1996 the Board of Immigration Appeals denied the appeal, but granted the applicant and her family voluntary departure. *Order of the Board of Immigration Appeals, Executive Office for Immigration Review.* The applicant remained in the United States. ***Consular Memorandum,*** dated December 13, 2005. The applicant married in 1996 and gave birth to a child in 1997 in the United States. *Id.; Birth certificate for the older applicant's child.* On January 31, 2000 the applicant divorced (*See divorce certificate*), and on September 9, 2000 the applicant married her current spouse, a U.S. citizen. *Marriage certificate, birth certificate for the applicant's spouse.* On April 11, 2002 the applicant gave birth to a second child. *Birth certificate for the applicant's child.* In June 2003, the applicant returned to Peru. *Consular Memorandum*, dated December 13, 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until June 2003, when she left the United States. In applying for an immigrant visa to come to the United States, the applicant is seeking admission within ten years of her June 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 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 herself or her children would experience if her waiver request is denied is not directly relevant to the determination of 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 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 in the event that he resides in Peru or the United States, as he 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 joins the applicant in Peru, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States as were his parents. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse has no cultural ties to Peru and barely speaks Spanish. *Statement from the applicant's spouse*, dated May 20, 2004. The applicant's spouse states that in 1997 he was shot at work in California by a disgruntled employee. *Id.* He received psychological counseling for seven months. *Id.* The applicant's spouse asserts that he fears going to Peru because of the danger there. *Id.* The AAO acknowledges the statements made by the applicant's spouse, particularly with regard to the shooting that he endured and the psychological issues surrounding such a traumatic incident. The AAO notes, however, that the record does not include an evaluation from a licensed health care professional that documents continuing psychological effects, if any, from the 1997 shooting incident and how such effects would impact the applicant's spouse's ability to relocate to Peru. The record does not address if the applicant's spouse currently suffers from a significant physical or psychological health conditions. Furthermore, while the applicant's spouse asserts that Peru is dangerous, the record fails to include any published country conditions reports documenting such danger and how it would affect 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)). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if she were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The parents of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant notes that her children have suffered a tremendous amount of stress in not being able to see the applicant's spouse on a regular basis, as they have accompanied the applicant to Peru. *Statement from the applicant*, dated April 8, 2006. According to the applicant's spouse, the children have missed growing up with their grandparents, aunts, uncles, cousins, and they are missing out on what it means to be part of a bigger family. *Statement from the applicant's spouse*, dated November 17, 2005. The AAO notes that the applicant's children are not qualifying relatives in this particular case, and while the effect of a child's suffering upon a qualifying relative will be considered, there is nothing in the record that addresses how the hardship experienced by the applicant's children as a result of relocation has affected the applicant's spouse. The applicant's spouse asserts that the financial strain on the family has been difficult to deal with. *Id.* While he asserts that the cost of maintaining two homes, as well as the expense of airline tickets, has placed added pressure on him, the AAO notes that the record does not include documentation such as mortgage or housing rental costs, airline ticket receipts and utility bills that demonstrate his actual expenses. As previously noted, 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)). Furthermore, there is nothing in the record to show that the applicant is unable to contribute to her family's financial well-being from Peru. The applicant's spouse states that he loves the applicant and misses the companionship that she gives him. *Statement from the applicant's spouse*, dated November 17, 2005.

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, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse rises 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 her spouse if he were to continue to reside in the United States without her.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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 she merits a waiver as a matter of discretion.

On appeal, counsel for the petitioner requests the opportunity to make an oral argument regarding the issues in this case. Regulation, however, requires the requesting party to explain in writing why an oral argument is necessary. Further, CIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to fully represent the facts and issues in this case and, consequently, denies the request for oral argument.

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.