

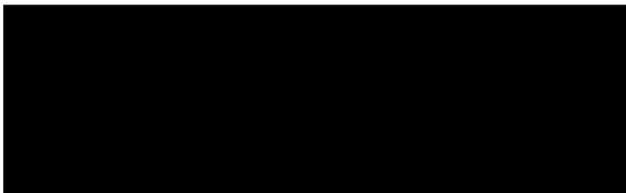
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

FILE:

Office: LIMA

Date:

MAR 16 2010

IN RE: Applicant:

APPLICATION: 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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Peru, entered the United States without inspection in October 2002 and did not depart the United States until July 2004. The applicant was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children, born in 2000 and 2005.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 12, 2007.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated July 19, 2007. In addition, in October 2009, January 2010, and February 2010, the AAO received supplemental documentation in support of the appeal. The entire record was reviewed and considered in rendering this decision.

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

¹ The applicant does not contest the officer in charge's finding of inadmissibility. Rather, she is requesting a waiver of inadmissibility.

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 *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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience extreme hardship if he relocated to Peru to reside with the applicant due to her inadmissibility. In a declaration, the applicant's spouse asserts that he would suffer emotional hardship, as he immigrated to the United States in 1964; he has lived in the United States for 46 years and does not want to start over again in a country to which he has no ties. In addition, he notes that he currently serves as a Communication Services Officer for the U.S. Coast Guard Auxiliary; his obligation to the U.S. Coast Guard Auxiliary does not end until December 31, 2010. *Letter from* [REDACTED], dated January 15, 2010. Moreover, he notes that he has a vast support network in the United States, including a sibling and his family and his two sons and their families, and he does not want to be separated from them. Finally, he contends that he wants his young children to be raised in the United States, their home country, with their mother and their father. *Form I-290B*, dated July 18, 2007.

Based on a totality of the circumstances, the AAO finds that applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Peru. The nature of his duties with the U.S. Coast Guard Auxiliary does not allow the applicant's spouse much freedom in terms of where he resides. Given his contractual obligations to the U.S. Coast Guard Auxiliary, it would not be feasible for him to accompany the applicant to Peru. Moreover, the applicant's spouse would suffer hardship due to unfamiliarity with the country, as he has not resided in Peru since 1964. Finally, the applicant's spouse would suffer hardship due to long-term separation from his community and his family.

Extreme hardship must also be established in the event the applicant's U.S. citizen spouse remains in the United States while his spouse resides abroad due to her inadmissibility. With respect to this criteria, the applicant's spouse contends that he is suffering emotional hardship due to his spouse's inadmissibility; he notes that the separation from his spouse is causing him to suffer. *Supra* at 1. In addition, he notes that his children deserve to have a unified family. Finally, he contends that he is experiencing financial hardship as he is maintaining two homes, one in Peru and one in the United States, and he is accruing additional financial expenses due to frequent visits to Peru to see the applicant. *Letter from* [REDACTED] dated November 14, 2006.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. Nor has it been established that the applicant's children are experiencing extreme hardship due to their current living arrangements, thereby causing the applicant's spouse extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant's spouse, the record establishes that the applicant's spouse has been employed full-time on a long-term basis, as an Accountant, earning over \$32,000. Letter from [REDACTED] No documentation pertaining to the applicant's spouse's current expenses, assets and liabilities has been provided. It has thus not been established that the applicant's U.S. citizen spouse is unable to support himself financially. The record also fails to establish what specific contributions the applicant made to the household prior to her departure from the United States, to establish that her physical absence is causing extreme financial hardship to his spouse. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording her the opportunity to assist her spouse with respect to their finances. While the applicant's spouse may need to make adjustments with respect to his financial situation and the maintenance of the household while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme emotional and/or financial hardship due to the applicant's inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant remains in Peru due to her inadmissibility. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although USCIS is not insensitive to his situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.