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



U.S. Citizenship
and Immigration
Services



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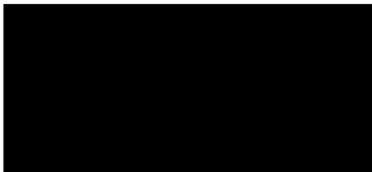
OFFICE: LIMA, PERU

FILE: 

IN RE: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru and 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 entered the United States with a B-2 visa on or about May 21, 1991. The applicant's status changed from visitor to student on August 12, 1991, but she failed to comply with the terms of her F-1 status from December 31, 1992. The applicant was placed into immigration proceedings for failure to maintain the conditions of her status and was ordered removed from the United States on March 3, 2000. The applicant attained the age of eighteen on February 8, 2003. The applicant remained in the United States until the date she was removed on February 4, 2008. The applicant was unlawfully present in the United States from February 8, 2003 to February 4, 2008. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 a beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated March 22, 2011.

On appeal, counsel for the applicant contends that the applicant's spouse has been suffering financial, emotional, and physical hardship because of separation from his wife. Counsel further states that the applicant's spouse is unable to relocate to Peru because he would be leaving behind his family and financial obligations in the United States, he has limited Spanish-speaking skills, and he would be forced to leave the army.

In support of the waiver application and appeal, the applicant submitted affidavits from the applicant and her spouse, documents concerning the applicant's spouse's service in the army, background information regarding the army's procedures, medical records, and property documents. 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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*,

21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In the present case, the record reflects that the applicant is a twenty-six year-old native and citizen of Peru who was unlawfully present in the United States from February 8, 2003 to February 4, 2008. The applicant's spouse is a thirty-one year-old native and citizen of the United States. The applicant lives in Peru and the applicant's spouse lives in Miami, Florida.

The applicant's spouse asserts that he is suffering from financial hardship because he travels to Peru to see his wife. See *Affidavit from* [REDACTED] dated July 10, 2010. The applicant's spouse claims that his trips to Peru have affected his business opportunities at his place of employment, due to his absence from work. *Id.* The applicant's spouse also states that the cost of his visits to Peru have taken a toll on his finances. See *Affidavit from* [REDACTED] dated April 13, 2011. It is noted that though the applicant's spouse states that his annual income is approximately \$48,000 per year, the record does not contain any supporting documentation concerning the applicant's spouse's financial status. See *Affidavit from* [REDACTED] dated July 10, 2010. Similarly, there is no supporting documentation concerning the applicant's spouse's financial obligations, including his trips to Peru. Finally, there is no supporting documentation regarding the impact of the applicant's spouse's trips to Peru on his financial opportunities. Further, the courts have found that though economic detriment is a factor for consideration, it is not enough by itself to justify an extreme hardship determination. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse asserts that he is suffering from stress and that he has experienced shortness of breath, severe palpitations, severe recurrent headaches, and insomnia. *See Affidavit from [REDACTED]*, dated July 10, 2010. The applicant's spouse claims that he needs his wife's support in order to eliminate the stress causing these symptoms. *Id.* The applicant's spouse also asserts that he is at risk for heart disease or a heart attack based on his family's history of diabetes and that he needs his wife to help him maintain a healthy diet. *Id.* The applicant's spouse submitted two letters from his physician to support his assertions. The first letter states that the applicant's spouse has a history of recurrent migraine headaches triggered by stress and lack of sleep, and that he may require medical attention for treatment. *See Letter from [REDACTED]*, dated May 13, 2010. The second letter states that the applicant's spouse has a family history of diabetes, hypertension, and dyslipidemia, and that his physician reviewed lifestyle, diet, and exercise with him. *See Letter from [REDACTED]*, dated June 24, 2010. The evidence does not contain a report or evaluation of the applicant's spouse's psychological or physical state excepting medical notes concerning physical therapy. There is no indication that the applicant's spouse is currently undergoing treatment for any psychological conditions or heart conditions. Further, there is no indication that the applicant's spouse's emotional or physical hardship is impacting his ability to perform in his employment or daily activities. In fact, the applicant's spouse submitted a letter from the Department of the Army characterizing his performance as exceptional. *See Letter from [REDACTED]*, dated April 8, 2011. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). There is not sufficient evidence on the record to find that the applicant's spouse is suffering a level of emotional or physical hardship in the applicant's absence that goes beyond the common results of inadmissibility or removal.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While 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 applicant's spouse asserts that he cannot relocate to Peru because he would have to leave behind his family members in the United States. He states that he is very close to his parents and siblings and has contact with them on a daily basis. *See Affidavit from [REDACTED]*, dated July 10, 2010. Additionally, the applicant's spouse states that he jointly owns property in the United States, but would not be able to complete his mortgage payments if he relocated. *Id.* Specifically, the applicant's spouse asserts that since he does not speak Spanish fluently, he would have trouble gaining employment in Peru. *Id.* It is noted that the applicant's spouse submitted evidence of his joint ownership of property in the United States. *See Special Warranty Deed.*

It is also noted that the applicant's spouse is a native of the United States who is currently a member of the National Guard pursuant to an eight-year contract, signed on May 4, 2010. *Id.*

Enlistment/Reenlistment Agreement Army National Guard, signed May 4, 2010. The applicant's spouse claims that since the contract term has not expired, he would be in breach of contract and potentially face discipline if he relocated to Peru. See *Affidavit from* [REDACTED], dated July 10, 2010.

The record establishes that the applicant's spouse is a thirty-one year-old native and citizen of the United States who has ties to the United States through his family relationships and his ownership of property. The applicant's spouse does not speak Spanish fluently and has contracted to be a member of the National Guard. Based on the eight-year contract signed by the applicant's spouse on May 4, 2010, he would not be released from his contract with its monthly training obligations until May 4, 2018. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Peru, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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).

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation and the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.