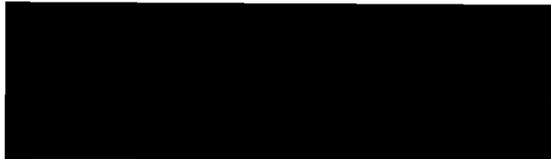


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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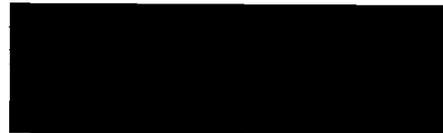
OFFICE: LIMA, PERU

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Officer-In-Charge, Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on a motion to reopen. The motion to reopen will be denied.

The record reflects that the applicant is a native and citizen of Peru who entered the United States without admission or parole on August 17, 1991. The applicant filed a Form I-589, Request for Asylum, on December 11, 1991. On September 7, 1999, an immigration judge granted voluntary departure to the applicant, with an alternative order of removal if the applicant did not depart the United States by August 7, 2000. The applicant appealed that decision to the Board of Immigration Appeals (BIA), and on July 19, 2002, the BIA affirmed the immigration judge's denial of the applicant's asylum application. The Ninth Circuit Court of Appeals, on September 22, 2004, denied the applicant's petition for review. The applicant accrued unlawful presence in the United States from September 22, 2004 until his departure from the United States on July 18, 2006. The Officer-In-Charge found the applicant to be inadmissible to the United States under 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Officer-In-Charge concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Officer-In-Charge*, dated January 18, 2007. On appeal, the AAO also found that the applicant had not established extreme hardship to his U.S. citizen spouse and dismissed the appeal accordingly. *See Decision of the AAO*, dated May 1, 2009.

On appeal, the applicant's spouse asserts that she is suffering from depression and dealing with the difficulties of being a single parent. The applicant's spouse contends that she had a hard time functioning at work and in school. She further states that she is suffering from financial problems and does not have anyone to care for her child while she works.

In support of the waiver application and appeal, the applicant submitted letters from his spouse, letters of support, identity documents, medical records, family photographs, documents from his spouse's school, a letter from his spouse's employer, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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.

The applicant’s qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant or his child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or an applicant’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant or applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The record reflects that the applicant is a fifty-three year-old native and citizen of Peru. The applicant’s spouse is a twenty-five year-old native and citizen of the United States. The applicant’s spouse is currently residing in Bell, California, and the applicant is currently residing in Mexico.

The applicant’s spouse asserts that she is depressed in the absence of her husband and that when she discovered she was pregnant, she had a hard time functioning in work and school. *See Letter from* [REDACTED] received May 19, 2011. The applicant’s spouse further asserts that her financial problems have been giving her stress, frustration, and panic attacks. *Id.* To support her assertions, the applicant submitted letters of support stating that the applicant’s spouse has been tearful since the departure of her husband and that there are days when she appears depressed and stays in her room. *See Letters from* [REDACTED] [REDACTED] dated May 19, 2009. The applicant also submitted a letter from a psychologist stating that the applicant’s spouse is suffering from high anxiety and severe depression due to separation from

her husband. *See Letter from* [REDACTED] dated February 19, 2007. The psychologist also stated that after her husband's departure, the applicant's spouse had to work full-time and only attend college part-time, while she attended college full-time previously. *Id.* It is noted that the psychologist's letter recommends that the applicant's spouse seek mental health treatment or counseling, but there is no evidence in the record of any other psychological evaluation or treatment for the applicant's spouse. *Id.* The applicant also submitted a letter from her employer stating that the applicant's spouse had been ignoring her responsibilities at work and that if the problems persisted, then she would receive a week without pay. *See Letter from* [REDACTED] dated May 20, 2009. It is noted that the letter also states that there have been no other problems, and documentation later submitted by the applicant do not mention any further difficulties at the applicant's spouse's place of employment. *Id.* It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse is unduly impacting her ability to care for her child and perform in her daily life. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility or removal.

The applicant's spouse asserts that she is having financial problems because she has to pay for household expenses, cannot afford to hire a caretaker for her child when she returns to work, and is uncertain as to whether she can return to school. *See Letter from* [REDACTED] received May 19, 2011. The applicant's spouse states that she moved in with her parents when the applicant departed the United States because she felt lonely. *See Letter from* [REDACTED] dated May 26, 2009. The applicant's spouse further states that her husband only earns three hundred dollars a month in Peru, so that he is unable to assist with her household expenses. *See Letter from* [REDACTED] received May 19, 2011. It is noted that the record does not contain information concerning the applicant's income and household expenses in Peru. The record also does not indicate how the applicant's spouse has been supporting herself during her period of unemployment.

The applicant's spouse asserts that her husband's credit has been ruined by his absence from the United States. *Id.* The applicant submitted financial documentation including bills addressed to him alone and bills addressed to the applicant's spouse alone. It is noted that though the applicant's bills indicate overdue payments and possible foreclosure action, the applicant's spouse's bills do not reflect any past due payments or indicate that the applicant's spouse has been unable to maintain her own financial obligations. As noted above, any hardship the applicant suffers will only be considered insofar as it affects his qualifying relative. The record does not demonstrate the applicant's spouse's liability for the applicant's debts. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, 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 does not address in the Form I-601 appeal whether she would experience any hardship if she relocated to Peru to reside with the applicant. However, the record contains a

Form I-212 appeal that alleges that the applicant's spouse fears danger if she relocates to Peru because she believes that her husband is danger in Peru. *See Letter from* [REDACTED] dated February 30, 2007. It is noted that the applicant filed a Form I-589, Request for Asylum in the United States, based upon the danger he feared in Peru, which was denied by an immigration judge on September 7, 1999. Specifically, the immigration judge stated that the court believed that the applicant could return to Peru without facing any problems and that internal relocation within the country is an option. *See Immigration Court Transcript*, dated September 7, 1999. Further, it is noted that the applicant's spouse states that she has been visiting the applicant in Peru once a year for the past five years and there is no indication that she experienced any problems in Peru. *See Letter from* [REDACTED] received May 19, 2011.

The applicant's spouse also asserts that she has lived in the United States her whole life and that her family members live in the United States. *See Letter from* [REDACTED] dated February 30, 2007. She also contends that she will not have the same educational and financial opportunities in Peru. *Id.* The applicant's spouse states that the applicant is earning three hundred dollars a week in Peru. *See Letter from* [REDACTED] received May 19, 2011. However, as noted above, there is no evidence supporting the applicant's stated income and there is no evidence concerning with whom the applicant resides and the extent of his financial obligations in Peru. It is noted that the record contains country conditions information on Peru from 2005, but updated country conditions information has not been submitted. It is also noted that the applicant's parents reside in Peru and there is no information regarding the extent to which they or other family members could provide assistance to the applicant and his spouse. *See Form G-325A*, dated December 13, 2004. Letters submitted by the applicant's spouse's family members state that the applicant's spouse needed to remain in the United States because she was a caretaker for her ill father. *See Letter from* [REDACTED] dated February 1, 2007; *Letter from* [REDACTED] dated March 2, 2007. It is noted that the applicant's spouse's father is currently deceased and the most recent letters of support from the applicant's spouse's family members do not indicate any hardship she will experience upon relocation to Peru. *See Letters from* [REDACTED] dated May 19, 2009.; *Death Certificate of* [REDACTED] dated February 5, 2008. 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)). The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Peru.

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. 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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 motion to reopen will be denied.<sup>1</sup>

**ORDER:** The motion is denied.

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<sup>1</sup> It is noted that the applicant filed a Form I-290B on February 7, 2007, based on the denial of his Form I-212 by the Director, California Service Center. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As noted in a separate decision, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant’s Form I-212.