



U.S. Citizenship
and Immigration
Services

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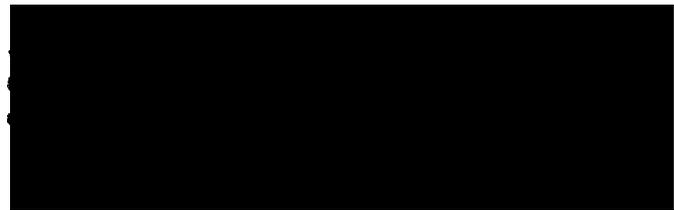


FILE: AAO-04-024-50010 Office: U.S. EMBASSY, PANAMA Date: **OCT 22 2004**

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DUPLICATE COPY

**identifying data deleted to
prevent disclosure of warranted
invasion of personal privacy**

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Panama. 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 Colombia who was found 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 between April 1992 and May 2002, and seeking readmission within 10 years of her last departure from the United States in or about May 2002. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to immigrate to the United States to reside with her husband and lawful permanent resident child.

The officer-in-charge found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer-in-Charge* (July 30, 2003).

On appeal, counsel asserts that refusal to admit the applicant would result in extreme hardship to her spouse. In support of the appeal, counsel submits the birth certificate of the applicant's husband showing his birth in the United States, the couple's New York marriage certificate, phone bills, unidentified photographs, copies of the permanent resident card and passport of the applicant's daughter, and a copy of her daughter's birth certificate. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(v) 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 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 U.S. citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant 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 a visitor visa on April 18, 1992, authorized to remain until October 17, 1992. On September 20, 1996, the applicant's husband filed on her behalf an *Application for Alien Relative* (Form I-130), which was subsequently approved. In May 2002, the applicant departed the United States. The AAO notes that the applicant remained in the United States for nearly ten years beyond the period of stay authorized by her visitor visa. The accrual of unlawful presence for purposes of inadmissibility determinations under section 212(a)(9)(B)(i)(II) of the Act begins no earlier than the effective date of this amended section, April 1, 1997. The applicant was unlawfully present in the United States from April 1, 1997, until her departure in May 2002, or a period of over five years. In applying for an immigrant visa and alien registration, the applicant is seeking admission within 10 years of her 2002 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The only qualifying relative in this case is the applicant's U.S. citizen husband.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

Counsel asserts that the applicant's spouse [REDACTED] would face extreme hardship if he remains in the United States without the applicant. Counsel bases this assertion on the *bona fides* of the marriage and emotional hardship of separation. In addition, counsel states, [REDACTED] is not a resident nor a citizen of Colombia and therefore could not reside permanently there with his spouse." *Attachment to Form I-290B*,

Notice of Appeal to the Administrative Appeals Unit (AAU). Counsel also states, [REDACTED] is established in his community in the United States and is gainfully employed neither of which would be available to him if he were to depart from the United States.” *Id.* No documentation of Colombian country conditions or laws is included in the record.

It appears from the record that the applicant’s husband faces, as do all spouses facing potential separation from a spouse, a difficult decision of whether remain in the United States or to relocate to Colombia to reside with his spouse. Counsel does not establish extreme hardship to the applicant’s spouse if he relocates with her to Colombia or remains in the United States without her. The BIA has held, “[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *See Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver 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). Further, financial difficulties alone are generally insufficient to establish extreme hardship. *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 record in this case is not sufficient to establish that hardship faced by [REDACTED] would rise above and beyond the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States to the level of “extreme” as contemplated by the statute and case law.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.