

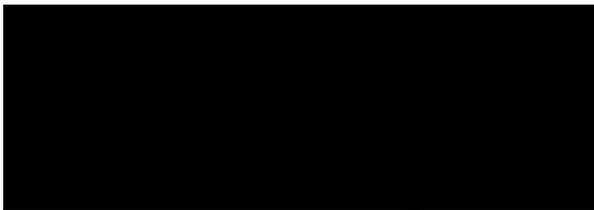
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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AB

FILE: [Redacted]

Office: PANAMA CITY, PANAMA

Date: DEC 16 2005

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Panama City, 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 Venezuela who was determined to be inadmissible to the United States by a consular officer 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. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The acting 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 Acting Officer in Charge*, dated July 7, 2004.

On appeal, the applicant's spouse contends that the decision of the acting officer in charge erred in stating that the applicant entered the United States in 1996 without inspection. The applicant's spouse further asserts that she suffers extreme hardship as a result of separation from the applicant. *Letter from Rebecca A. Habian*, dated July 15, 2004. In addition to her letter, the applicant's spouse submits a copy of a letter from her Congresswoman addressed to the United States Consulate General in Caracas, Venezuela; a letter from the mother of the applicant's spouse, dated July 25, 2004; copies of financial documents and invoices; copies of the biographic page and two entry pages from a United States passport issued to the applicant's spouse and a color copy of a Venezuelan passport issued to the applicant. The entire record was reviewed and considered in rendering a decision on the applicant's 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 [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 entered the United States without inspection during 1996. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 2002, the date of the applicant's departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

The AAO acknowledges the assertion of the applicant's spouse that the applicant entered the United States pursuant to a valid visa. *Letter from Rebecca A. Habian*, dated July 15, 2004. The applicant's spouse submits a color copy of a Venezuelan passport issued to the applicant to support her assertion. The applicant's spouse explains that the applicant inadvertently allowed his passport to get wet resulting in the illegibility of the entry stamp. *Id.* at 1. The applicant's spouse claims that if the passport page is examined, the stamp remains visible. *Id.* The record fails to establish the type of visa supposedly issued to the applicant and fails to demonstrate the length of authorized stay granted to the applicant upon his arrival in the United States in 1996. While making no finding as to the legibility of the contested entry stamp, the AAO notes that even if the applicant entered the United States pursuant to a valid visa, the applicant would have commenced accrual of unlawful presence once his authorized stay in the United States expired resulting in the need for an approved Form I-601 waiver application.

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 the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

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 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.

The applicant's spouse contends that she would endure extreme hardship if she relocated to Venezuela in order to reside with the applicant. The applicant's spouse states that she has visited the applicant in his home country and that life in Venezuela includes political upheaval, a corrupt leader, and kidnappings. *Letter from*

Rebecca A. Habian at 3. The applicant's spouse indicates that the applicant cannot find work in Venezuela and that it would be impossible for her to pay her financial debts if she resides there. *Id.* She states that she can barely speak Spanish and would be unable to find employment in her husband's home country. *Id.* The AAO notes that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States maintaining residence in a stable country, access to employment and the ability to communicate in her native tongue. The applicant's spouse contends that she suffers financial hardship as a result of separation from the applicant. *Letter from Rebecca A. Habian* at 2. The applicant's spouse reports having been in an accident that resulted in loss of the use of one hand for approximately two months and relates the additional resulting expenses for treatment and therapy. *Id.* The applicant's spouse also points to costs associated with maintenance of her automobile and rent as a source of hardship. *Id.* In support of these assertions, the applicant's spouse submits copies of invoices and statements from banks where she maintains accounts. While the identified expenses cited by the applicant's spouse may be beyond her means, the record fails to evidence that the expenses would not have been incurred if the applicant were present in the United States and the record fails to demonstrate how the applicant would assist his spouse in paying for these expenses if he were present or if a waiver is granted. The AAO notes that the applicant's spouse reports that the applicant is currently unemployed and that if he returns to the United States, he plans to go to school. *Id.* at 3 ("He hopes to learn Heating and Air-conditioning technology from my brother who is in the field and also go to school so we can one day be financially free..."). The record reflects that the applicant and his spouse have never resided together as a married couple further rendering the assertion that separation imposes financial hardship on the applicant's spouse unpersuasive. Moreover, the record fails to establish that the applicant was authorized to work in the United States when he resided in this country.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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

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.