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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: PANAMA CITY Date: DEC 26 2006

IN RE: [REDACTED]

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Panama City, Panama, denied the waiver application, and it 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 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. § 212(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is the fiancée of a U.S. citizen. She 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 her fiancé.

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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated April 6, 2005.

The record reflects that, on November 27, 2000, the applicant was admitted to the United States as a B-2 nonimmigrant visitor. On May 26, 2001, the applicant's nonimmigrant status expired and she took up unlawful residence in the United States. In June, 2003, the applicant returned to Colombia. On November 29, 2004, the applicant's fiancé filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant. On December 3, 2004, the applicant appeared for a visa interview and testified that she had remained in the United States for more than 365 days past her authorized stay.

On December 15, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant contends that she should be granted a waiver because her fiancé is suffering emotional and financial hardships without her. *See Applicant's Affidavit* dated May 3, 2005. In support of these assertions, the applicant submitted only the above-referenced affidavit and an affidavit from her fiancé. The entire record was reviewed and considered in rendering a decision in this case.

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.

The acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to unlawful presence in the United States. The applicant does not contest the acting officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 at 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. 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).

The record reflects that in March or April 2003 the applicant met her now fiancé, [REDACTED] is a native and citizen of the United States. The applicant and [REDACTED] do not have any children. The applicant and [REDACTED] are in their 20's and [REDACTED] may have some health concerns.

[REDACTED] in his affidavit, states that the applicant is his soul mate who enables him in his daily life, profession and education. He states that, as a U.S. citizen, he is entitled to pursue his own happiness which is

the return of his fiancé to the United States so that they can get married and live together like they had planned and dreamed. He states their separation has deeply affected him not only financially but emotionally since he has found it hard to cope with his extreme and rising feelings of depression while trying to maintain other aspects of his life including his education and work activities. He states it is difficult to be apart from the applicant because she is the woman he loves and the possibility of them being apart for so long is causing him to reach emotional levels he has never experienced before which are affecting his everyday life and which will eventually lead him to seek professional help. Finally he states that the separation will lead to devastating personal losses because he will have to travel to Colombia to visit the applicant, which would require him to take time away from work and school. The applicant, in her affidavit, states that [REDACTED] has continuously expressed feelings of anxiety and despair due to the possibility of being kept apart and that the situation is becoming unbearable to the point that he feels extremely desperate, powerless, frustrated and depressed and is becoming a factor that keeps him from fully responding to his daily activities.

There is no evidence in the record to indicate that [REDACTED] is unable to support himself either through his own employment or with funds provided to him by his parents. There is no evidence in the record to confirm that [REDACTED] suffers from a physical or mental illness that would cause him to be unable to perform his daily activities or work duties. There is no evidence in the record to suggest that [REDACTED] would suffer a financial loss that would result in extreme hardship to him if he had to support himself without any income that may be provided by the applicant, even when combined with the emotional hardship discussed below.

There is no evidence in the record to confirm that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] is suffering anxiety, depression and is separated from his fiancée, this is hardship that is commonly suffered by aliens and families upon deportation.

[REDACTED], in his affidavit, states that it would be an extreme hardship not only for him but his family to go to Colombia for the wedding due to the security circumstances there, especially for U.S. citizens. The record reflects that [REDACTED] has traveled to Colombia to visit the applicant on at least two occasions in August 2003 and December 2003 and he has not indicated that he experienced any problems during these visits. The record does not contain any evidence to confirm that [REDACTED] and his family would have any problems traveling to Colombia for the wedding. Additionally, the AAO notes that, as a United States citizen, the applicant's fiancé is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 fiancé would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a fiancé is removed from the United States. In nearly every qualifying relationship, whether between fiancé(e)s, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(a)(9)(B)(v) and 212(i) of the Act, 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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, demonstrated 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 AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen fiancé as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.