



U.S. Citizenship
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MAY 11 2006

FILE: [Redacted]

Office: TEGUCIGALPA, HONDURAS

Date:

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:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Tegucigalpa, Honduras. 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 Honduras 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. § 1182(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 his last departure from the United States. The applicant's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States with his spouse.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The Form I-601, Application for Waiver of Grounds of Excludability, was denied accordingly. *Decision of the Officer-in-Charge*, dated February 3, 2004.

On appeal, counsel asserts that the applicant is not inadmissible under sections 212(a)(9)(B)(i)(I) or 212(a)(9)(B)(i)(II) of the Act, however, if he is found inadmissible, his U.S. citizen spouse will suffer extreme hardship. *See Brief in Support of Appeal*, March 15, 2004.

Counsel submits the aforementioned brief, an affidavit from the applicant's spouse, information on country conditions, a notice of termination for the applicant's spouse, affidavits regarding the residence of the applicant's spouse and education loan information for the applicant's spouse. 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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.

Counsel's first contention is that the applicant is not inadmissible under sections 212(a)(9)(B)(i)(I) or 212(a)(9)(B)(i)(II) of the Act as he accrued less than 180 days of unlawful presence. The record indicates that the applicant entered without inspection on August 5, 2001, received an order of removal in absentia on December 13, 2002, reopened his removal case and departed the United States on July 2, 2003 pursuant to an order of voluntary departure on May 19, 2003.

Counsel contends that the applicant was granted parole a few hours after entering the United States without inspection. See *Brief in Support of Appeal*, at 3-4. Therefore, counsel asserts that the applicant was in an authorized period of stay from the time he was granted parole until the time he was ordered removed in absentia and from the time he was granted voluntary departure until the time he departed the United States. *Id.* The AAO notes that there is no evidence in the record that the applicant was ever granted parole into the United States. The record indicates that the applicant was arrested and subsequently released on his own recognizance on August 11, 2001. *Order of Release on Recognizance*, dated August 11, 2001. Therefore, the applicant accrued unlawful presence from August 5, 2001, the date he entered the United States, until May 19, 2003, the date he was granted voluntary departure. The applicant is 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 more than one year.

Counsel asserts that if the applicant is found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, then his U.S. citizen spouse will suffer extreme hardship.

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 due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Honduras or in the event that she remains in the United States as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Honduras. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. *Federal Register*, Volume 69, Number 212, November 3, 2004. Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen spouse to relocate to Honduras in its current state would constitute extreme hardship. This hardship is augmented by several other factors. Counsel refers to the U.S. Department of State Consular Information Sheet on Honduras dated February 2, 2004. The information sheet details the high crime rate, wide variety of crimes, security concerns and unemployment rate.

In addition, the applicant's spouse also has strong family ties to the United States. Counsel states that the parents and two daughters of the applicant's spouse are U.S. citizens and reside in the United States. *Brief in Support of Appeal*, at 11. Counsel asserts that nine members of the applicant's spouse's extended family reside in the United States, but there is no indication of their legal status or relationship to the applicant's spouse. *Id.* Counsel states that the applicant's spouse is very close with her family, especially her mother who she visits daily and takes care of. *Id.* at 12. The applicant's spouse states that she has no family in Honduras except for her husband and no ties or connections to Honduras. *Affidavit from the Applicant's Spouse*, at 2, dated March 15, 2004.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that she remains in the United States. The applicant's spouse states that she is behind in paying her bills which include her daughter's tuition, she moved her belongings to her mother's house as storage was too costly, she lost her job due to hardship caused by separation and her husband cannot find employment abroad. *Id.* at 1-2. The AAO notes that the applicant's spouse's daughter appears to be going to a private school and is behind on tuition payments, however, there is no indication that she cannot attend public school and avoid the financial burdens of private school. The record includes a notice of termination for the applicant's spouse, which states that she was terminated due to tardiness, inability to follow instructions and perform job duties. *Notice of Termination*, dated March 3, 2004. It is not clear from this letter what part, if any, separation from the applicant had in this decision. The applicant's spouse previously stated that the applicant was not employed while in the United States, but he has a job offer upon entering the United States legally. *Letter from the Applicant's Spouse*, at 1, dated July 3, 2003. Therefore, the applicant's spouse has been able to reside in the United States without support from the applicant in the past. Based on the record, the applicant's spouse would not face extreme hardship if she remained in the United States without the applicant.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, if she remains in the United States, 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 in the event that she remains in the United States without the applicant. 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.