



U.S. Citizenship
and Immigration
Services

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HB

JUN 01 2007

FILE:

Office: PANAMA

Date:

IN RE:

Applicant:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 and the application denied.

The record reflects that the applicant is a native and citizen of Venezuela. The applicant 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. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge found that the applicant had failed to establish her husband would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts that her husband will suffer extreme hardship if she is denied admission into the United States.

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

[A]ny 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.

The record reflects that the applicant entered the United States illegally in June 1998. The applicant remained unlawfully in the United States, and she married a U.S. citizen on October 20, 2001. The applicant's husband filed a Form I-130, Petition for Alien Relative on the applicant's behalf on December 17, 2001. The Form I-130 was approved on May 1, 2002. The applicant departed the United States on April 19, 2005. At that time, she was subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department 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 applicant's parents are not U.S. citizens or U.S. lawful permanent residents. The applicant is therefore not the daughter of a U.S. citizen or an alien lawfully admitted for permanent residence. The record reflects, however, that the applicant is married to a U.S. citizen. The applicant's spouse (Mr. [REDACTED]) is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, 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. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

The record contains the following evidence relating to Mr. [REDACTED] extreme hardship claim:

A March 19, 2005, letter written by Mr. [REDACTED] stating that his wife maintains their household and makes sure that their bills are paid on time, and that his wife's moral support helps him with the stress of his work and life.

An October 27, 2005, letter written by Mr. [REDACTED] stating that separation from his wife is difficult because he and his wife love and miss each other and want to start a family in the United States. Mr. [REDACTED] states that he will leave the United States and move to Venezuela if his wife's Form I-601 application is denied. Mr. [REDACTED] states further that moving will cause him hardship because Americans are not liked in Venezuela, and because Venezuela is a dangerous country.

An October 21, 2005, letter written by the applicant stating that her husband's home, work and life are in the United States, and that she and her husband want to have children and accomplish their dreams in the United States.

The record contains no other evidence of hardship.

The AAO finds that the cumulative evidence contained in the record fails to establish that Mr. [REDACTED] would suffer emotional, financial, physical or other hardship that goes beyond that ordinarily associated with removal if he remained in the United States, or if he moved to Venezuela with the applicant. The AAO notes that the record contains no evidence to corroborate the assertion that Mr. Jaramillo would be in danger if he moved to Venezuela.

The record additionally lacks evidence to corroborate the financial and emotional hardship claims made by the applicant and her husband. Furthermore, as noted above, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See *INS v. Jong Ha Wang, supra*. Readjustment to a different culture and environment and emotional hardship caused by severing family and community ties are also common results of removal or inadmissibility, and do not constitute extreme hardship. See *Matter of Pilch and Ramirez-Durazo v. INS, supra*.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband would suffer extreme hardship if she were denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. Accordingly, the appeal will be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.