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FILE:



Office: PANAMA CITY, PANAMA

Date: JUN 25 2007

IN RE:



PETITION: 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)

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

ON BEHALF OF PETITIONER:



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 District Director, Panama City, Panama, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Venezuela, was found inadmissible to the United States under 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 United States citizen and 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 return to the United States and join his wife and family.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife would suffer extreme hardship if he is required to remain in Venezuela. 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-

(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.

Regarding the applicant's grounds of inadmissibility, the record reflects that his nonimmigrant status expired on July 8, 1996. He was apprehended on September 29, 1997, and placed in deportation proceedings. He filed for political asylum on April 19, 1998, while in deportation proceedings. The applicant's asylum application was denied. On February 19, 1999, the applicant was granted voluntary departure through April 19, 1999. The applicant appealed this decision, and it was affirmed by the Board

of Immigration Appeals (BIA) on February 27, 2003. The BIA permitted the applicant to voluntarily depart the United States within thirty days of February 27, 2003. The applicant did not depart, however, and a final warrant of removal/deportation was issued on March 28, 2003. The applicant was listed as an absconder because he had failed to adhere to the BIA's order. The applicant was arrested on September 14, 2004 and removed on October 9, 2004.

The applicant is now seeking admission within ten years of his October 2004 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. The applicant does not contest the director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, so hardship to the applicant or his daughter may not be considered.

The record contains many references to the hardship that the applicant's wife's daughter would suffer if the applicant were refused admission into the United States. However, section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant or his wife's son (or any other of her family members) will face cannot be considered, except as it may affect the applicant's wife.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's wife is a citizen of the United States. She and the applicant have been married since August 8, 2000 and have a daughter, who is also a citizen of the United States.

In his June 27, 2006 affidavit, the applicant states that since his removal he dreams of nothing but to be reunited with his wife and daughter; that he speaks to them every day; that he fully regrets his immigration violations; that he did not leave within the mandated timeframe because his lawyer had told him that he was not required to leave; that he does not want his wife and daughter to relocate to Venezuela because the country is unstable and unsafe for Americans; and that had he known what would happen, he would have departed the United States as ordered.

In her July 5, 2006 affidavit, the applicant's wife states that the applicant arrived in the United States as a teenager, and that she and the applicant have been together since that time; that the applicant had departed Venezuela and applied for political asylum in the United States because his father was assaulted; that a previous attorney had not handled the applicant's immigration paperwork properly and delayed the filing of a petition; that the applicant was unaware of the order of deportation; that the applicant has been robbed twice and almost killed in Venezuela since being removed; that she does not want to raise her daughter in such an environment; that she has suffered both emotionally and physically as a result of her separation from the applicant; that she does not think it is fair that the couple's daughter is separated from her father; and that the couple's daughter has trouble with her behavior as a result of the separation.

The record also contains an affidavit from the applicant's wife's mother (the applicant's mother-in-law). In her July 5, 2006 affidavit, she states that her daughter's separation from the applicant has been a nightmare for the entire family; that her granddaughter is suffering as a result of being separated from the applicant; that her daughter has suffered two nervous breakdowns as a result of being separated from the applicant¹; that her daughter has suffered high levels of stress, hair loss, and weight gain as a result of the separation²; that she hopes for an end to the family's nightmare; and that the separation is not justified.

The record also contains a July 6, 2006 letter from [REDACTED], who is apparently a friend of the family. [REDACTED] states that the applicant arrived in the United States as a teenager with no knowledge of immigration law and was just following his parents; that the applicant's wife and daughter

¹ No evidence has been submitted to document this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

² Again, no evidence has been submitted to document this assertion. *See id.*

have had a challenging time personally, emotionally, and financially since the applicant's removal; and that the applicant has never been in trouble with the law, applied for welfare or food stamps, or requested unemployment compensation. He also describes the economic and political conditions in Venezuela.

Finally, the record contains a July 1, 2006 letter from [REDACTED] the director of the applicant's daughter's preschool program. [REDACTED] states that the couple's daughter's behavior is erratic at times, and that this pattern of behavior is accentuated when she goes to visit the applicant in Venezuela. She states her belief that separation from the applicant is causing her stress and anxiety.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is refused admission. Particularly if she remains in the United States, the record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Venezuela and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor has the applicant established that his wife would face extreme hardship if she joined the applicant in Venezuela, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation if she were to relocate with the applicant. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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, 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 finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

Moreover, the AAO notes that the applicant's marriage occurred after he had been placed in deportation proceedings, his political asylum application had been denied, and he had been granted voluntary departure. The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Numoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. The AAO therefore finds that the applicant's marriage to his wife constitutes an after-acquired equity, and is deserving of less weight than would be the case had the marriage occurred before the applicant's commission of the immigration infraction that led to his inadmissibility and removal. The applicant's wife was fully aware of the issues at hand in this case at the time of the marriage.

Accordingly, the AAO finds that the applicant failed to establish extreme hardship to his United States citizen spouse.

Finally, the AAO notes that the District Director's decision was a combined adjudication of the applicant's Forms I-601 and I-212. The Adjudicator's Field Manual, at Chapter 43 ("Consent to Reapply After Deportation or Removal"), states the following:

43.2 Adjudication Processes

- (c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

As the Form I-601 will be denied, approval of the Form I-212 would serve no purpose. Accordingly, the Form I-212 will also be denied, pursuant to AFM 43.2(c).

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

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