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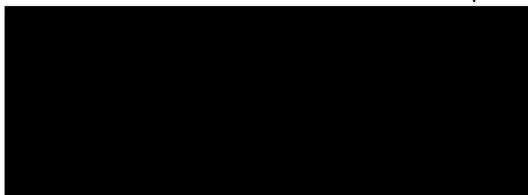


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FILE:



Office: TEGUCIGALPA, HONDURAS

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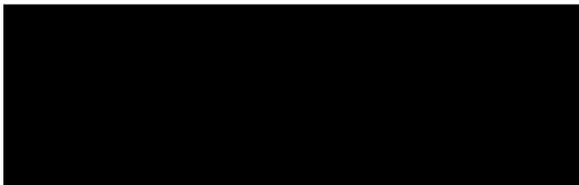
IN RE:



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:



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 (OIC), Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 her last departure from the United States. The record indicates that the applicant is the daughter of a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen father and United States citizen son.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's father and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated February 21, 2006.

On appeal, the applicant, through counsel, asserts that the OIC's decision "was erroneous and [she] urges[s] that the applicant has demonstrated eligibility for a waiver." *Brief attached to Form I-290B*, filed March 23, 2006.

The record includes, but is not limited to, counsel's brief, a birth certificate for the applicant's United States citizen son, a letter from the applicant's father, and various psychological evaluations and school documents regarding the applicant's son's speech and behavioral problems. The entire record was reviewed and considered in arriving at 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.

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen son would suffer if the applicant were denied admission into the United States. 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 her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's father is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's father.

In the present application, the record indicates that the applicant initially entered the United States without inspection in June 2000. On August 25, 2000, the applicant's son, [REDACTED], was born in New York. The applicant's father filed a Form I-130 on behalf of the applicant, which was approved. The applicant departed the United States in April 2005. On April 5, 2005, the applicant filed a Form I-601. On February 21, 2006, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen father.

The applicant accrued unlawful presence from June 2000, the date the applicant entered the United States without inspection, until April 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her April 2005 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) 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.

Counsel asserts that the applicant's father and son would face extreme hardship if the applicant's waiver is denied. Brief attached to Form I-290B, page 3, *supra*. Counsel states the applicant's father "is employed as a

carpenter, a profession in high demand in the New Orleans metropolitan area, following Hurricane Katrina, where he currently resides. He and his daughter have, over the past three years, have become very close. He is involved in the emotional and financial support of his daughter and grandson, and she is integral to his life." *Id.* The AAO notes that the applicant's father is an experienced carpenter, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Honduras. Additionally, the AAO notes that the applicant's father is a native of Honduras, who spent his formative years in Honduras, he speaks and writes in Spanish, and it has not been established that he has no family ties to Honduras. Regarding the applicant's son, counsel states that he "has significant developmental difficulties. [REDACTED] has delayed receptive and expressive skills and has been diagnosed with mild retardation; he has been deemed disabled by the New York City Department of Education and placed in an Individualized Education Program." *Id.* The record establishes that the applicant's son was enrolled in Speech Therapy; however, the last document regarding the applicant's son's special education is dated December 20, 2004, when the Special Education Committee was going to review the applicant's son for continued Special Education. *See Notice of Request for Review of IEP*, dated December 20, 2004. Additionally, the AAO notes that the applicant's son resides in Honduras with the applicant and it has not been demonstrated that her son is having difficulties rising to the level of extreme hardship in adjusting to the culture of Honduras. Furthermore, the applicant's son speaks and understands the Spanish language. Counsel states that the applicant's "employment history is almost non-existent, as she is a young single mother, and includes only physical labor as a housekeeper." *Brief attached to Form I-290B*, page 3, *supra*. The AAO notes that the applicant is a high school graduate who is bi-lingual in English and Spanish, and it has not been established that the applicant could not find gainful employment in Honduras. Additionally, counsel makes numerous statements regarding the extreme hardship the applicant will suffer in Honduras; however, the AAO notes that hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Furthermore, the hardship the applicant's United States citizen son would suffer if the applicant were denied admission into the United States is irrelevant for a waiver under section 212(a)(9)(B)(v) of the Act as he is not a qualifying relative. The AAO finds that the applicant failed to establish that her father would suffer extreme hardship if he joined the applicant in Honduras.

In addition, counsel does not establish extreme hardship to the applicant's father if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's father is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's father will "gladly" support the applicant and her son in Honduras. *Id.* The record establishes that the applicant and her father only recently reunited after 20 years of separation and there is no evidence that the applicant is needed to assist her father financially or that their current separation is causing him hardship beyond that which would normally be expected. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's father faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father 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 she 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.