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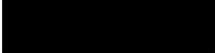
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEGUCIGALPA, HONDURAS

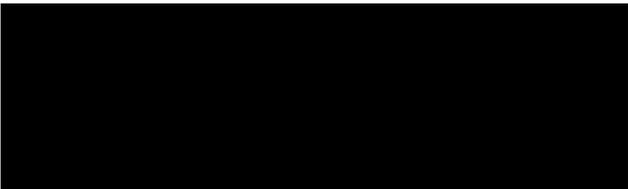
Date: SEP 06 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the United States Citizenship and Immigration Services (USCIS) Officer-in-Charge (OIC), 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. He seeks a waiver of inadmissibility pursuant to sections 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 his U.S. citizen wife.

The record reflects that the applicant and his spouse, [REDACTED], were married in the United States on May 23, 2002. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on August 27, 2002. The petition was approved on May 5, 2002. The applicant returned to Honduras in March 2005 and applied for an immigrant visa at the U.S. Embassy in Tegucigalpa, Honduras. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) with the Embassy on April 26, 2005.

The applicant has indicated that he first entered the United States without inspection on November 15, 1994. The record reflects that the applicant was initially granted Temporary Protected Status (TPS) on December 2, 1999, a status that was extended through July 5, 2006. On August 23, 2005, the Director of the California Service Center issued a Notice of Intent to Withdraw the applicant's TPS status because of an April 12, 2000 arrest for the unlawful carrying of a weapon in Houston, Texas. The Director requested that the applicant submit evidence of final court disposition of this arrest and any other arrests. The record shows that the applicant complied with this request, submitting court documents showing that he pled guilty and was convicted in the Criminal Court of Harris County, Texas on May 2, 2000 of one count of Carrying a Weapon, a Class A misdemeanor under Texas law, and sentenced to ten days incarceration. There is no evidence in the record indicating that the applicant's TPS status was subsequently revoked or extended beyond July 5, 2006. The record does contain an adjudicated Form I-821 Application for Temporary Protected Status filed by the applicant on July 10, 2007, suggesting that the applicant has returned to the United States.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated July 25, 2005.

On appeal, counsel submits additional evidence of hardship and asserts that the evidence submitted clearly establishes that the applicant's spouse has suffered extreme hardship because of her separation from her husband and will continue to experience extreme hardship if the applicant is denied admission.

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

- (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, or
  
- (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 [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 record reflects that the applicant entered the United States without inspection in November 15, 1994 and remained in the United States until voluntarily departing in March 2005. The applicant was granted TPS status on December 2, 1999 and this status was extended through its expiration on July 5, 2006. The applicant is now seeking admission to the United States. The applicant accrued unlawful presence from April 1, 1997 through February 16, 1999, the date he initially filed for TPS, a period in excess of one year. The applicant has not disputed that he was unlawfully present in the United States during this period and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

Counsel contends on appeal that the denial of the waiver has created extreme hardship for the applicant’s spouse. Counsel points to bills and bank account statements that show that the funds available to the applicant’s spouse have dwindled without the financial contribution her husband provided while employed in the United States. Counsel asserts that the separation of the applicant from his spouse and family members has caused them “extreme disruption,” and the applicant’s spouse fears losing the couple’s two cars, their mobile home and the lifestyle they worked very hard to attain.

In her affidavit dated August 10, 2005, the applicant’s spouse indicates that the applicant was the “family’s sole provider” before leaving for Honduras. She states that the family’s savings and her meager income derived from cleaning houses will soon be insufficient to support her and other family members. She maintains that she is suffering “great emotional distress” from being deprived of the companionship and assistance of the applicant. In her affidavit dated February 24, 2005, the applicant’s spouse states that she could not adjust to life in Honduras because “[l]ife there is hard, even more so than . . . in the United States.”

The record includes an affidavit from the applicant; affidavits from the applicant’s spouse dated February 24, 2005 and August 10, 2005 respectively; an affidavit from the applicant’s stepdaughter; employment and financial documents for the applicant and his spouse; title, payment and insurance documents for the applicant’s cars and mobile home, a letter from the management of the mobile home park in which the

applicant's spouse resides; letters from acquaintances; utility bills and family photographs. The entire record has been considered in rendering a decision on the appeal.

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 spouse faces extreme hardship if he is refused admission.

Contrary to counsel's assertion, the bank statement in the record does not contain entries subsequent to the applicant's departure from the United States showing that, and to what extent, the applicant's absence has caused financial hardship to his spouse. Likewise, there is no evidence showing that the applicant is unable to find work in Honduras to support his family, or showing that the applicant's spouse's income is insufficient to meet her financial obligations. While the assertions of the applicant, his spouse husband and counsel are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *See Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

The AAO recognizes that the applicant's spouse suffers emotionally as a result of separation from the applicant, but the evidence does not show that his suffering is atypical of individuals separated as a result of removal or inadmissibility. There is no evidence, for example, that the applicant's spouse has been diagnosed with a recognized psychological or emotional disorder requiring medical treatment or that the emotional strain she experiences from being separated from the applicant has prevented her from working or otherwise functioning normally. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Furthermore, the applicant has not submitted sufficient evidence showing that his wife would experience extreme hardship should she relocate to Honduras. The mere assertion that life is hard there does not meet the applicant's burden of proof.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests 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.