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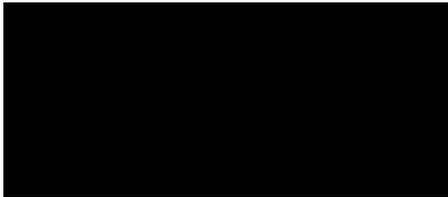
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
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U.S. Citizenship
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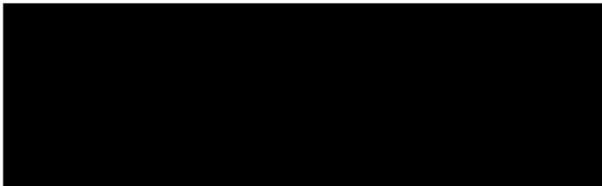
FILE: [REDACTED]

Office: MEXICO CITY (PANAMA) Date: **AUG 29 2008**

IN RE: [REDACTED]

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.

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 District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Panama who was found to be 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)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States as a B2 visitor for pleasure on August 18, 1988 and was later included in an asylum application filed by his father. The asylum application was denied by the immigration judge and an order of voluntary departure converted to a deportation order thirty days after an appeal of the judge's decision was dismissed by the Board of Immigration Appeals (BIA) on April 8, 1993. The applicant remained in the United States until May 24, 2005, when he was removed to Panama. The applicant applied for an immigrant visa 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 reside with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *See decision of the District Director dated June 14, 2006.*

On appeal, counsel asserts that U.S. Citizenship and Immigration Services ("CIS") erred in finding that the applicant's wife would not suffer extreme hardship if the waiver application is denied, and further asserts that the applicant merits the relief as an exercise of discretion. *See Notice of Appeal to the AAO, Form I-290B.* Specifically, counsel states that since she was separated from the applicant upon his removal from the United States in 2005, the applicant's wife's mental health has suffered and she has experienced financial hardship due to the loss of the applicant's income. *See Brief in Support of Appeal, dated August 9, 2006, at 4.* Counsel further asserts that the applicant's wife would suffer financial hardship if she relocated to Panama due to the loss of her employment in the United States and would suffer emotional hardship as a result of separation from her relatives in the United States and lack of family ties or work experience there. *Brief at 4.* Counsel additionally asserts that the applicant's children are experiencing emotional hardship due to the separation from their father, which is also causing the applicant's wife to suffer pain and anxiety. *Brief at 4-5.* In support of the waiver application and appeal, counsel submitted documentation including a letter from a clinical social worker who evaluated the applicant's wife, an affidavit from the applicant's wife, a letter from the applicant, letters from friends and relatives of the applicant and his wife, a letter from the applicant's wife's employer and a letter from the applicant's former employer in the United States, school records and other documents relating to the applicants children, and documentation relating to the family's financial obligations. 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:

- (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 Secretary, 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 children have suffered since the applicant departed the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver of 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. It is noted that Congress did not include hardship to other family members as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. 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 record reflects that the applicant is a thirty-two year-old native and citizen of Panama. He resided in the United States from 1988 to May 24, 2005, when he was detained by immigration authorities and removed from the United States. He married his wife, a thirty-one year-old native and citizen of the United States, in October 1995, and they resided together in Houston, Texas with their two children until the applicant left the United States in 2005.

The applicant was subject to a deportation order as of May 8, 1993, thirty days after the BIA dismissed an appeal of the denial of his father's asylum application. *See Decision of the Board of Immigration Appeals* dated April 8, 1993. The applicant began to accrue unlawful presence on April 1, 1997, the date section 212(a)(9)(B)(i)(II) of the Act went into effect, until May 24, 2005, when he was removed to Panama.¹ He is therefore 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 one year or more.

Counsel asserts that since the applicant's removal, his wife has suffered emotional hardship as a result of the separation from her husband and "has had to seek professional help in order to cope with the separation." *Brief* at 4. A letter from [REDACTED] a Licensed Clinical Social Worker who evaluated the applicant's wife, describes various symptoms she is experiencing as a result of "worry and anxiety" and characterizes her current financial situation as "dire." The letter further states,

Emotionally, all these losses are taking a toll on her. She feels depressed, hopeless, desperate, anxious, overwhelmed by all the responsibilities that she once shared and now has to meet on her own, and she cries frequently. . . . These feelings are compounded because, in addition to the usual parenting responsibilities, she is in a position of wanting to give her children hope of being reunited with their father as a whole family, when, in fact, she is feeling fearful and hopeless herself. *Undated letter from [REDACTED] Licensed Clinical Social Worker.*

The letter from [REDACTED] states that the applicant's wife is suffering from mental, physical, and emotional hardship due to being separated from her husband and the financial and emotional strain that has resulted, and further states that the situation is a "recipe for disaster" for her. *Letter from [REDACTED]* Although the input of any mental health professional is respected and valuable, the AAO notes that the letter from Ms. [REDACTED] is based on a single interview rather than an ongoing relationship between the mental health professional and the applicant's wife. Further, the letter does not document any history of treatment for the anxiety suffered by the applicant's spouse, and there is no other evidence on the record that the applicant's wife sought further treatment for her condition. The conclusions reached in the submitted evaluation, being

¹ The applicant filed an application for adjustment of status with the Immigration and Naturalization Service (now CIS) on November 17, 1997. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by [REDACTED] Executive Associate Commissioner, Office of Field Operations* dated June 12, 2002. However, the applicant did not properly file the application because he was under the jurisdiction of the BIA. The case would therefore have to be reopened by the BIA and remanded to the immigration judge for the application to be properly filed.

based on a single interview, do not reflect the insight and elaboration resulting from an established relationship with a mental health professional. This renders the findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that any emotional harm the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with her spouse's removal from the United States. Although the depth of her concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus familial and emotional bonds, exists.

Counsel asserts that the applicant's wife is suffering financial hardship due to the loss of the applicant's income, and the applicant's wife states that she depended on the applicant for financial support because her income is not sufficient to meet all of their financial obligations. *Affidavit of* [REDACTED] dated November 15, 2005. She states that she is struggling financially and her children have lost their health insurance and are now in the school lunch program. *Id.* A letter from the licensed clinical social worker who evaluated the applicant's wife and letters from relatives of the applicant's wife further state that both of the family's cars were repossessed and the applicant's wife is applying for government assistance, including food stamps, and is selling their home. *See undated letter from* [REDACTED] *and letter from* [REDACTED] dated July 3, 2006. 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). Further, although a relative and another individual have stated that the applicant's wife has been forced to sell her home because she cannot make the mortgage payments, has had two cars repossessed, and has had to apply for public assistance to help pay the family's expenses, no documentation was submitted in support of these assertions. 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 further notes that although counsel and the applicant's wife's aunt stated in 2006 that the applicants wife was in danger of losing her house and was putting it up for sale, the applicant's wife submitted a letter to the AAO dated June 23, 2008 that indicates she still resides in the family home. There is insufficient evidence on the record to establish that the applicant's removal and the loss of his income have resulted in extreme economic hardship to his wife.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Panama because "she will have to leave behind all her family and go live in a country where she does not have any close relatives and where she has never had any working experience." *Brief* at 4. Counsel further asserts that she will lose her house, "the job she has enjoyed," and "the society where she grew up." *Id.* No information was submitted to document conditions in Panama or otherwise support the assertion that the applicant's wife would suffer extreme hardship in Panama. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA

1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the evidence on the record, the emotional and financial hardship that the applicant's wife is suffering and would suffer if she relocated to Panama appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the qualifying relative would suffer hardship that would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.