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U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

#3



FILE:



Office: TEGUCIGALPA, HONDURAS

Date: JUN 02 2008

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.

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

The applicant is a native and citizen of Honduras 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 without inspection in March 2003 and remained until September 26, 2006, when he traveled to Honduras to apply for an immigrant visa. 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 return to the United States and reside with his spouse and two U.S. Citizen children.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 23, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from returning to the United States. *Brief in Support of Appeal*, dated June 5, 2007. Counsel claims that the applicant's wife will suffer extreme hardship if she remains in the United States without the applicant because she must work and care for their newborn baby, who has Down syndrome, by herself. Counsel states that the applicant's wife is also experiencing financial hardship without the applicant's income and states that the applicant is able to earn about twice the amount his wife earns. Counsel also states that separation from the applicant is causing his wife to suffer psychological hardship, and that she has been diagnosed with adjustment disorder with depression and anxiety. *Brief in Support of Appeal*. Counsel further asserts that relocating to Honduras would cause the applicant's wife to suffer extreme hardship because she would lose everything she has worked for in the United States and would experience emotional hardship worrying about the safety of their son due to the serious and widespread problem with gangs. *Brief in Support of Appeal*.

The record contains an affidavit from the applicant's wife, photographs of the applicant and his family members, a letter from the applicant's wife's obstetrician stating that the baby tested positive for Down syndrome while she was pregnant, a copy of their older child's birth certificate, a letter from a licensed psychologist regarding the applicant's wife's mental health, bank statements and tax returns for the applicant and his wife, a copy of the applicant's wife's lease and receipts for rent payments, copies of the applicant's wife's passport and itinerary for a trip to Honduras in June 2007, and copies of greeting cards sent to the applicant from his wife. The entire record was reviewed and considered in rendering this decision.

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.

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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the tier 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).

Counsel asserts that the applicant’s wife is experiencing emotional and financial hardship because she must care for their new baby, who was born on February 15, 2008 and has Down syndrome, by herself. Further, without the applicant’s income, the applicant’s wife must work in addition to caring for the baby, who requires “a high degree of specialized care.” See *letter from Counsel* dated April 14, 2008. Counsel further states that the applicant’s wife is overwhelmed caring for the baby by herself and raising a child who will face lifelong health difficulties. *Id.* As evidence of the child’s condition, counsel submitted a letter from the applicant’s wife’s obstetrician written while she was pregnant stating that tests indicated the baby would be born with Down syndrome. See *letter from [REDACTED]* dated October 22, 2007.

Counsel additionally asserts that separation from the applicant has resulted in psychological hardship to the applicant’s wife and that she has been diagnosed with depression and anxiety. A letter from a clinical psychologist who examined her states that the applicant’s wife “reports she has been depressed, anxious, lonely, fearful, and has frequent crying spells” without the applicant and their son, who traveled to Honduras with the applicant. See *letter from [REDACTED]* dated May 30, 2007. The letter indicates that the applicant took the child to Honduras because the applicant’s wife could not afford to pay for child care without the applicant’s income and has no family in the area to help her. *Id.* The letter further states that a clinical interview and tests for depression and anxiety indicate the applicant’s wife is suffering from “Adjustment Disorder with Depression and Anxiety, DSM-IV, 309.28,” and the condition “would likely worsen if she is not able to reunite with her husband and son.” *Id.*

Counsel also states that the applicant’s wife is experiencing financial hardship without the applicant’s income. An affidavit prepared by the applicant’s wife before her second child was born states that she earns about

\$325 per week and that this is about half of the applicant's income potential in the United States. She further states that even working full-time she is not able to pay all of her expenses, including food, gas, utilities, automobile, and rent. See Affidavit of [REDACTED] dated May 12, 2007. Income tax returns for 2006 submitted with the appeal indicate that the applicant's wife earned \$12,749 in 2006.

Counsel states that the applicant's wife expressed that she would experience significant hardship if she relocates to Honduras to reside with the applicant because she would lose everything she worked for in the United States and because of the gang problem in that country. The applicant's wife states,

I am worried about my son growing up in Honduras even for part of his childhood. My husband has spoken to me about the gangs that hang out on the streets in Honduras. I know that gangs are a problem in that country, as I spent the first fifteen years of my life there. Even thinking about my child growing up around these gangsters in a country where he has much less opportunity that he would in the United States sometimes keeps me from sleeping at night. Affidavit of [REDACTED] dated May 12, 2007.

Upon a complete review of the evidence of record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is prohibited from returning to the United States. The record contains documentation to show that the applicant's new baby has Down syndrome and that the applicant's wife is emotionally and financially overwhelmed having to care for the baby by herself because of the amount of specialized care the child needs and will continue to need. Further evidence indicates that the applicant's wife was already experiencing symptoms of anxiety and depression before the birth of the baby due to her separation from the applicant and her older child, whom she could not afford to raise alone without the applicant's income. Separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998). The record further indicates that the applicant's wife does not have family members in the United States to provide financial or other support. The emotional hardship caused by separation from the applicant combined with the ongoing hardship that would result from raising a child with specialized needs on her own without the applicant's income and emotional support constitutes extreme hardship for the applicant's wife if she remains in the United States.

Returning to Honduras poses numerous other hardships for the applicant's wife, including the need to secure new employment, adjustment back to life in Honduras after 10 years in the United States, and the financial burden of moving and relinquishing her current employment. It is noted that no evidence concerning the availability in Honduras of educational, medical, and other services for individuals with Down syndrome or other disabilities was submitted. Further, no evidence was submitted to document the prevalence of gangs in Honduras mentioned by the applicant's wife in her affidavit. Such evidence would be relevant to establishing potential hardship to the applicant's wife that might result from her children experiencing hardships in Honduras. The AAO notes, however, that the Temporary Protected Status (TPS) designation for Honduras was extended by the Secretary of Homeland Security until January 5, 2009. The Federal Register Notice extending the TPS designation states the following:

The Government of Honduras has realized some success in disaster mitigation and prevention projects, as well as in rebuilding infrastructure since Hurricane Mitch. The country, however, still faces significant social and economic stress caused by the environmental disaster. . . Estimates of severely damaged or destroyed dwellings as a result of the hurricane ranged from 80,000 to 200,000. . . . By early 2005, nongovernmental organizations had repaired or

built over 15,000 housing units, but housing reconstruction had still not been completed in many areas and much of the housing that was built lacked water and electricity. . . . An estimated 70 to 80 percent of Honduras' transportation infrastructure was destroyed. . . . Infrastructure, however, remains basic and vulnerable to additional damage depending on weather conditions. . . . The country continues, however, to rely heavily on outside assistance and faces daunting long-term development challenges with hundreds of thousands of people living in areas designated as "high risk," awaiting completion of additional disaster mitigation projects. Current unemployment and underemployment rates range from 20 to 40 percent. . . . There continues to be a substantial, but temporary, disruption in living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily, to handle adequately the return of its nationals. Extension of the Designation of Honduras for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 72 Fed. Reg. 29529, 29530(May 29, 2007).

When considered in aggregate and in light of current conditions in Honduras, the factors of hardship to the applicant's wife, should she relocate to Honduras, constitute extreme hardship.

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is denied admission to the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The negative factor in this case is the fact that the applicant entered the United States without inspection and unlawfully remained in the United States for over three years, from March 2003 to September 2006. The positive factors in this case include the applicant's family ties to the United States, including a U.S. Citizen spouse and two U.S. Citizen children, and the extreme hardship to the applicant's wife if he is denied admission to the United States. The AAO further notes that the applicant has a record of working and paying his taxes in the United States and has not been convicted of any crimes. Although the applicant's immigration violation cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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. In this case, the applicant has met his burden that he merits approval of his application.

**ORDER:** The appeal is sustained.