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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Mexico City (Panama City)

Date: **MAR 18 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v),

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 the mother of a U.S. citizen and the daughter of a U.S. Citizen and a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States as a visitor for pleasure on May 23, 1992 and applied for asylum on April 29, 1994. Her asylum application was denied by the immigration judge on March 19, 1999. She was granted voluntary departure on that date, and the order converted to an order of removal when she failed to depart by the date ordered. The applicant remained in the United States until August 26, 2003. 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.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The applicant also applied for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212), and this application was denied in the same decision denying the waiver application. In situations like the applicant's case where an applicant must file Form I-212 and Form I-601, the Adjudicator's Field Manual states that Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states:

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.

Thus, the AAO will only consider the applicant's waiver application and inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

On appeal, the applicant asserts that Citizenship and Immigration Services ("CIS") failed to consider evidence that the exclusion of the applicant from the United States has resulted in extreme hardship to the applicant's many relatives residing in the United States, including the applicant's U.S. Citizen mother and Lawful Permanent Resident father. Specifically, the continued separation from their daughter has caused her elderly parents to suffer emotionally and financially, as the applicant was the relative who provided them with financial support and daily assistance with their physical needs.

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 experienced by the applicant’s adult U.S. Citizen daughter and U.S. Citizen grandchildren. 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 an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s parents are the only qualifying relatives, and hardship to the applicant’s daughter will not be separately considered, except as it may affect the applicant’s parents.

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 the present case, the record reflects that the applicant is a fifty-two year-old native and citizen of Colombia who resided in the United States from 1992 to 2003, when she returned to Colombia under an order of removal. The applicant’s parents, daughter, grandchildren, five sisters, and several nieces and nephews reside in Miami, Florida. The applicant submitted documentation stating that as a result of the continued separation from their daughter, the applicant’s seventy-three year-old mother and eighty year-old father have been affected emotionally and financially. A declaration from the applicant states that the applicant’s parents suffer from various medical conditions, that the applicant is the only one who was able to care for them and provide financial and emotional support, and that their health has deteriorated since the applicant left the United States. *See Page (Attachment) 7 to Notice of Appeal.*

The applicant further states that their separation has caused her parents to suffer deep depression and they “have lost the desire to live.” *See Attachment 7*. As evidence of their emotional hardship the applicant has submitted a report prepared by [REDACTED], a psychologist who evaluated the applicant’s mother in June 2005. The letter indicates that psychological testing was done and that the applicant’s mother is suffering from Major Depressive Disorder, Moderate, Without Psychotic Features, Recurrent with concurrent anxiety. *See Report of [REDACTED], dated June 30, 2005, Attachment 3*. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on psychological testing of the applicant’s mother, the record fails to reflect an ongoing relationship between a mental health professional and the applicant’s mother or any history of treatment for her depression. In fact, the evaluation of the applicant’s mother submitted with the April 2006 appeal was dated June 30, 2005. This is the same date as the original evaluation of the applicant’s mother, daughter, and grandchildren prepared by [REDACTED] that was submitted with the waiver application in 2005. This indicates that [REDACTED] only interviewed the applicant’s mother on one occasion in 2005 and provided no follow-up treatment, despite the diagnosis of major depression. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. Further, no evidence was submitted that the applicant’s mother has sought treatment for depression from any other mental health professional after her 2005 evaluation.

The evidence does not establish that any emotional hardship the applicant’s mother is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of the continued separation from her daughter. Although the depth of her concern over the applicant’s immigration status is not in question, 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 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 the familial and emotional bonds, exists.

The applicant also asserts that the applicant’s parents would suffer extreme hardship if the applicant were not permitted to enter the United States because they suffer from various medical conditions and need the applicant to return to the United States to care for them. Further, the applicant’s father states that he is an invalid and requests, “Please help this old couple end the few days they have left to be together, with all their children at their side.” *See Attachment 6*. The applicant states that her father suffered from cancer in the past and that she helped care for him when he was receiving treatment and also states her mother has a “sick heart,” advanced arthritis, and respiratory problems. *See Attachment 7*. Although significant conditions of health constitute an important factor when evaluating a claim of extreme hardship, no medical evidence of these conditions is contained in the record. Letters from the applicant, her daughter, and her parents as well as the report from psychologist refer to various medical conditions. For example, [REDACTED] states that according to the applicant’s mother, her health is poor and her heart problems and hypertension are worse because of her separation from her daughter. *See original report from [REDACTED] submitted in support of I-601 application*. There is no medical evidence on the record, however, to support these claims. The only

evidence of any medical condition submitted is documentation that the applicant's mother sought treatment once, on February 15, 2006, for an anxiety attack.

It also appears that the applicant's parents have several family members living in close proximity to them in the United States, and the applicant did not submit evidence establishing that they are unwilling or unable to care for the applicant's parents and provide financial support. According to the report from [REDACTED] the applicant's mother said "her family had abandoned her and that her daughter was the only one who cared, and who helped her and her husband." This statement is contradicted, however, by other evidence submitted that indicates the applicant has five sisters who reside in Miami, and they are a close-knit family who meet for family dinners and celebrations. See *Brief in Support of Appeal*, page 2; *declaration from family members*, Attachment 9. No evidence was submitted to support the assertion that only the applicant can take care of her parents or provide them with financial support or to explain why their five other daughters living in close proximity are unable or unwilling to provide this support.

The emotional hardship the applicant's parents would suffer 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 *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. The court in *Hassan v. INS*, *supra*, 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. The applicant made no claim that her parents would experience hardship if they were to join her in Colombia. Therefore, the AAO cannot make a finding of extreme hardship if her parents moved to Colombia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 has failed to establish extreme hardship to her U.S. citizen mother or Lawful Permanent Resident father 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. In addition, the Form I-212 was properly denied as no purpose would be served in granting permission to reapply for admission as the applicant is otherwise inadmissible. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.