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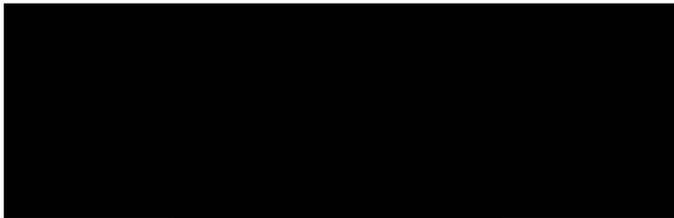
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: ROME, ITALY

Date:

**MAY 12 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 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, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Spain. He 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 under the visa waiver program on March 18, 2002 and was authorized to remain in the United States until June 17, 2002. He filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on July 31, 2003 and later traveled to Spain. He has not returned to the United States. 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant asserts that denial of the waiver would result in extreme hardship to his U.S. Citizen wife. Specifically, the applicant states that separation from his wife would result in extreme emotional hardship as well as financial hardship because he helps support her and her family.

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.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 twenty-eight year-old native and citizen of Spain who entered the United States under the visa waiver program on March 18, 2002 with authorization to remain in the United States until June 17, 2002. On July 31, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). He traveled to Spain in about September 2004 and has not returned to the United States. The record further reflects that the applicant's wife is a forty-four year-old native of the Dominican Republic. She is a naturalized U.S. Citizen who currently resides in the Bronx, New York, with her three sons, two of whom are U.S. Citizens and one of whom is a Lawful Permanent Resident.

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 Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations* dated June 12, 2002. The applicant accrued unlawful presence from June 18, 2002 until July 31, 2003, the date of his proper filing of Form I-485. The applicant 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. Pursuant to section 212(a)(9)(B)(i)(II), the applicant is barred from again seeking admission within ten years of the date of his departure.

The applicant claims that if he is refused admission to the United States, the continued separation from his wife will cause her to suffer extreme emotional and financial hardship. In support of this assertion he submitted a declaration prepared by his wife that states she loves the applicant and wants to build "a stable home and family with him" and that she cannot relocate to Spain because she has her job and sons in the United States. *See affidavit of [REDACTED]* dated September 12, 2005. The applicant's wife submitted an additional affidavit stating that denial of the waiver would also create financial hardship for her and her family because she does not earn enough to cover her expenses and needs the applicant's financial support. *See affidavit of [REDACTED]* dated October 21, 2005. In support of this assertion she submitted copies of

credit card, telephone, and cable bills and receipts documenting that the applicant has wired her money from Spain. She also submitted a copy of an eviction notice from her landlord dated October 8, 2005 and stated that she was very late with her rent.

The applicant and his wife both state that they love each other and that being separated from each other has resulted in emotional hardship. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her distress over the prospect of being separated from her spouse 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 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 the familial and emotional bonds, exists. The emotional hardship the applicant's wife claims she will suffer appears to be the type of hardship normally to be expected when a family member is excluded or deported. *See 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).

The applicant's wife further states that the effects of their continued separation on her financial situation also amount to extreme hardship because she does not earn enough to pay all of her expenses. Although she states she is working, she did not submit evidence of her income or document her monthly expenses. Further, although the applicant and his wife lived together only a short time, from 2003 until he returned to Spain in September 2004, the applicant's wife did not explain how she was able to support her family before she married the applicant in 2003. *See copy of letter from the applicant in Spain dated October 27, 2004 and Petition for Alien Relative signed on December 4, 2004 and listing the applicant's address in Spain.* There is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's exclusion. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife also states that she could not relocate to Spain because she has her job and sons in the United States. She did not submit any information concerning her job, such as her salary, the type of work she does, or the likelihood her work experience would enable her to find employment in Spain. She also submitted no information about her sons, such as their ages, whether they all still live with her, where they attend school, or whether there is any custody order preventing her from relocating with them. There is insufficient evidence on the record to establish that relocating to Spain would result in extreme hardship to the applicant's wife.

The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardships 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 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 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.