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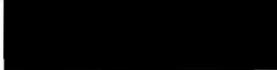
U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 30 200**

IN RE:



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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. 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 Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he is seeking a waiver of inadmissibility in order to reside in the United States.

The director found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *Director's Decision*, dated May 25, 2006.

On appeal, prior counsel asserts that the applicant and his spouse have been married for eleven years, separation would cause extreme hardship and the applicant is the father of a U.S. citizen. *Letter in Support of Appeal*, dated June 22, 2006.

The record includes, but is not limited to, counsel's letter, a statement from the applicant's daughter, a psychological evaluation of the applicant's spouse, the applicant's statement, the applicant's spouse's statement and a copy of the applicant's I-360 VAWA petition. The entire record was reviewed and considered in rendering a decision on the appeal. The Form I-290B indicates that a brief and/or evidence would be sent within 30 days, however, the AAO has not received this material. The record indicates that counsel was notified by the AAO to submit the material.

The record indicates that the applicant entered the United States without inspection in 1989, filed an application to adjust status on May 13, 1999, subsequently departed the United States with an advance parole and was paroled into the United States on May 14, 2000. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until May 13, 1999, the date he filed his adjustment of status application. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his departure.

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

(B) Aliens Unlawfully Present.-

(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 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 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant's child is not a permissible consideration in a 212(a)(9)(B)(v) waiver proceeding except to the extent that such hardship may affect the qualifying relative.¹ Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Colombia or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Colombia. This prong of the analysis is not addressed. Accordingly, the applicant has not demonstrated that his spouse would suffer extreme hardship were she to move to Colombia

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she would suffer extreme mental and emotional hardship, physical anguish and the loss of her sole means of support. *Statement of the Applicant's*

¹ The AAO notes the applicant's child's statement and psychological evaluation. However, they do not reflect that the applicant's spouse would encounter hardship based on the applicant's child's hardship.

Spouse, dated May 25, 2005. Other than brief references, in the submitted psychological exam and the applicant's daughter's statement, to the applicant's spouse encountering hardship, no other evidence of hardship has been presented. Moreover, the AAO notes that on October 12, 2006, the applicant filed a Form I-360 petition based on his spouse's physical and verbal abuse of him. The Form I-360 was approved on February 25, 2008. In support of the Form I-360, the applicant submitted a statement indicating that he had left his wife as of Thanksgiving 2005 and, as of the date of his statement, had not reconciled with her. *Applicant's Statement*, at 1, dated December 27, 2007.

Based on the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra*, held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely 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.