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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: PHILADELPHIA

Date:

OCT 31 2008

IN RE:



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

ON BEHALF OF APPLICANT:

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, Chief  
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Costa Rica. The applicant 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 after April 1, 1997. He 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 reside in the United States with his U.S. citizen spouse.

The record reflects that the applicant was first admitted to the United States in B-2 status on March 28, 1998 and he was granted a period of authorized stay expiring on September 27, 1998. The applicant remained in the United States until October 23, 1999. The applicant was again admitted to the United States in B-2 status on July 10, 2001. On June 22, 1998, the applicant's father filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on November 17, 1999. The applicant and his spouse, [REDACTED], were married in the United States on April 15, 2005. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on February 17, 2006. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on September 12, 2006.

The district director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated October 2, 2006.

On appeal, the applicant asserts that his wife was diagnosed with a tumor in 2005, and that she needs the applicant at her side as she undergoes treatment. *Attachment to I-290B*. The applicant also contends that his spouse suffers from "intense depression" and fibrosis, and that her emotional health is strained as a consequence of her daughter's pending deployment to Iraq and her son leaving for college. *Letter from Applicant*, dated August 19, 2008. The applicant states that his spouse is at high risk for breast cancer and will be unable to receive proper medical care in Costa Rica. *Letter from Applicant*, dated August 29, 2007.

The record contains, among other documents, statements from the applicant and his spouse, letters from the applicant's stepchildren, a letter from the applicant's employer, medical records and bills for the applicant's spouse, a letter dated October 25, 2006 from [REDACTED], a letter from the applicant's father, and family photographs. The entire record has been reviewed in rendering a decision on appeal.

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

- (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 record reflects that the applicant was unlawfully present from September 28, 1998 until October 23, 1999, a period in excess of one year, and again sought admission to the United States on July 10, 2001. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant’s U.S. citizen father and spouse are the only qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen

the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted), *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is generally appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In his letter, [REDACTED] states that the applicant’s spouse suffers from a tumor on her right elbow, has a long history of suffering from migraine headaches, and experiences “failed back syndrome,” a condition requiring medication that can place the applicant’s spouse “in need of total bed rest when the pain exacerbates.” The medical reports submitted by the applicant confirm that the applicant’s spouse was scheduled to have an abscess removed from her right arm. They also confirm that the applicant has complained of chronic neck and back pain and suffers from fibrocystic disease. However, there is no indication that the applicant’s spouse suffers from depression.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

Although the applicant has included his father on the waiver application, he has not identified any hardship his father would suffer if the waiver application is denied. The AAO acknowledges that the applicant’s spouse will suffer emotionally in the applicant’s absence, but there is no documentary evidence that she suffers from depression as claimed by the applicant. It is also acknowledged that the applicant’s spouse suffers from several other medical conditions, but the severity and impact of these conditions on her ability to function normally has not been sufficiently demonstrated. The record reflects that the applicant’s spouse is employed as an “immigration case worker” in her own business, and the extent to which she is unable to work because of her medical ailments has not been demonstrated. The evidence submitted by the applicant shows that the tumor on his spouse’s arm was to be removed and that she receives medication for her chronic pain. [REDACTED] states that the applicant’s chronic back and neck pain may result in incapacitation, but he does not indicate if, or how frequently, this occurs. The applicant has indicated that his spouse is at higher risk for breast cancer, but the medical records submitted show that she does not have breast cancer. The record does not reflect what assistance, if any, the applicant provides his spouse in dealing with her medical conditions.

The applicant has indicated that his spouse has difficulty affording her medications, but the record does not reflect that the applicant provides her with financial assistance (the applicant’s spouse indicates in her letter dated January 10, 2008 that the applicant does not have employment authorization), or that he will be able to do so if he is granted adjustment of status. 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 hardship described by the applicant is the common result of removal or inadmissibility, and it

does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Also, the applicant has failed to submit evidence to support his claim that his spouse would be unable to receive medical care in Costa Rica and has generally failed to demonstrate that she would experience extreme hardship if she relocated there.

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 his U.S. citizen spouse or father as required under section 212(a)(9)(B)(v) of the Act. 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)(v) of the Act, the burden of proving eligibility rests 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.