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FILE:



Office: MEXICO CITY (TEGUCIGALPA)

Date **APR 25 2006**

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge. 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 Honduras 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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The acting officer in charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated September 9, 2004.

On appeal, the applicant's wife asserts that she will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Wife on Appeal*, dated October 20, 2004.

The record contains statements from the applicant's wife in support of the appeal and the Form I-601 application; briefs from counsel in support of the appeal and the Form I-601 application, and; documentation of conditions in Honduras. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present matter, the record indicates that the applicant entered the United States on or about March 5, 2001 without inspection. The applicant married a U.S. citizen on July 10, 2002. The applicant departed the United States in August 2004. Thus, the applicant accrued over two years of unlawful presence in the United States. He presented himself at the U.S. Consulate in Honduras for a visa interview pursuant to an application for K-3 status filed on his behalf by his wife. The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

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 the alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 pursuant to section 212(i) of the Act. These factors include 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.

On appeal, the applicant's wife states that she will suffer economic and emotional hardship if the applicant is prohibited from entering the United States. *Statement from Applicant's Wife on Appeal*, dated October 20, 2004. The applicant's wife provides that she tried to reside in Honduras with the applicant, yet she was unable to obtain a permanent work permit without renouncing her U.S. citizenship. *Id.* The applicant's wife explains that she was unable to attend an English-language school in order to complete her high school studies. *Id.* The applicant's wife discusses health problems she developed in Honduras, including bronchitis and a fungal infection. *Id.* She indicated that she had no health insurance in Honduras. *Statement from Applicant's Wife in Support of Form I-601 Application*, dated May 29, 2004. She explains that Honduras has a high crime rate, and that she feared leaving her place of residence. *Statement from Applicant's Wife on Appeal*. The applicant's wife states that her mother supported her and the applicant financially while she was in Honduras, yet her mother was unable to continue such assistance. *Id.* The applicant's wife explains that her mother suffers from health problems including diabetes, and thus she performs daily tasks for her mother in the United States, such as shopping and errands. *Id.* The applicant's wife provides that she has a close relationship with her family in the United States. *Id.*

Counsel explains that the applicant's wife has resided in the United States nearly her entire life, and all of her family members are in the United States. *Brief in Support of Appeal*, dated October 19, 2004. Counsel highlights that airfare between the United States and Honduras is expensive, which would limit the applicant's and his spouses travel between the countries if they are compelled to reside outside of the United States. *Id.* at 5. Counsel states that the applicant's wife was unable to attend high school in Honduras due to the fact that private bilingual schools do not accept married students. *Id.* at 6. Counsel notes that U.S. citizens are targets for crime in Honduras, and that the applicant's wife felt threatened there. *Id.* Counsel states that unemployment is high in Honduras, and the applicant's wife would have very limited economic opportunity there. *Id.* at 10. Counsel provides that the applicant and his wife wish to start a family, and that childcare would be difficult in Honduras. *Id.* at 12-13. The record reflects that the applicant's wife is currently in the United States, and counsel asserts that it is unlikely that she will return to Honduras to join the applicant. *Id.* at 10.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from entering the United States. The applicant's wife has communicated that she wishes for the applicant to reside with her, and the record reflects that she enjoys close relations with her family members in the United States. Thus, it is evident that the applicant's wife will endure emotional consequences if she is separated from either the applicant or her family members. However, the applicant has not shown that his wife's continued separation from him or her family will cause emotional hardship that is greater than that typically experienced by the family members of those deemed inadmissible.

The AAO appreciates the differences between life in Honduras and the United States, and acknowledges the efforts of the applicant's wife to reside there. Yet, as a U.S. citizen, the applicant's wife is not required to reside outside the United States due to the applicant's inadmissibility. In fact, the applicant's wife is currently in the United States, and counsel states the opinion that she will remain in the United States whether or not the applicant is permitted to return. Accordingly, emphasis is placed on the likelihood of family separation.

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. Thus, the applicant has not shown that his wife's emotional hardship will rise above the level normally expected upon family separation.

The applicant's wife explains that her mother suffers from diabetes and health problems, and that her mother requires her assistance. However, the applicant has not submitted any documentation, such as medical records, to show that his mother-in-law suffers from health problems. 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 applicant's wife describes hardships she experienced while residing in Honduras, such as health issues and a lack of educational and employment opportunities. While the applicant's wife states that she received treatment for bronchitis, the applicant has not submitted documentation of such medical care. Again, 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. at 165. The applicant's wife stated that she was unable to obtain permanent employment authorization in Honduras without renouncing her U.S. citizenship. While she stated that she was eligible for temporary employment authorization, she provided that she did not apply. Thus, it is unclear whether she would be able to legally work in Honduras. However, as noted above, the record suggests that the applicant will remain in the United States, and thus she will not face the challenges of residing in Honduras.

The applicant's wife provided that her mother supported her and the applicant in Honduras, and that the applicant's earning potential there was not sufficient to sustain them both. Thus, it is evident that the applicant's wife does not rely on financial support from the applicant in the United States, and the applicant's absence does not constitute an economic burden on his wife.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.