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DEC 12 2006

FILE:

Office: TEGUCIGALPA, HONDURAS

Date:

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:

[Redacted]

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 Officer-in-Charge, Tegucigalpa, Honduras. 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 her last departure from the United States. The applicant's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States with her spouse.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse and the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *Decision of the Officer-in-Charge*, dated December 16, 2005.

On appeal, counsel asserts that the officer-in-charge erred and abused his discretion in denying the waiver. *Form I-290B*, dated January 5, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and medical records, information on country conditions, letters of support, photographs and financial information.¹

The applicant entered the United States in November 1997 without inspection, she was granted temporary protected status on August 24, 1999, her temporary protected status expired on July 5, 2003 and she departed the United States in July 2005. Therefore, she accrued unlawful presence from November 1997, the date she entered the United States, until August 24, 1999, the date she was granted temporary protected status.² The applicant is 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 more than one year.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

¹ The AAO notes that the record contains documents in Spanish which are not translated into English, therefore, these records will not be considered in this decision. 8 C.F.R. §103.2(b)(3)

² The applicant was also unlawfully present from July 5, 2003, the date her temporary protected status expired, until she departed the United States in July 2005.

....

(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. 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 he relocates to Honduras or in the event that he remains in the United States as he 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 her spouse in the event of relocation to Honduras. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. *Federal Register*, Volume 69, Number 212, November 3, 2004. Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen spouse to relocate to Honduras in its current state would constitute extreme hardship. This hardship is augmented by several other factors. Counsel states that the applicant's spouse does not have any relatives in Honduras, he cannot read and write Spanish, and he

has never resided outside of the United States. *Brief in Support of Appeal*, at 4, dated January 5, 2006. In addition, the U.S. Department of State Consular Information Sheet on Honduras details the high crime rate, wide variety of crimes and security concerns. *U.S. Department of State Consular Information Sheet, Honduras*, at 2-3, dated November 21, 2005. The information sheet details the high crime rate, wide variety of crimes and security concerns.

The second part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he remains in the United States. Counsel states that the applicant's spouse's income is not enough to cover the monthly expenses for the two homes he owns with the applicant, he is supporting the applicant's daughter who has tuberculosis, he is supporting the applicant's two grandchildren and he is sending money to the applicant. *Id.* at 5. The applicant's spouse states that the applicant is the principle purchaser of their houses, most of the bills are paid and managed by her, and she is the primary person in which the home life is centered. *Statement of the Applicant's Spouse*, at 1-2, dated August 1, 2005. The record does not include substantiating evidence of financial hardship, other than the applicant's name listed on the deeds. The record reflects that the applicant's daughter is under treatment for tuberculosis infection. *Letter from Susan Harris, PHN*, dated August 1, 2005. However, there is no evidence of the severity of her infection and how this is causing hardship to the applicant's spouse.

Counsel states that the applicant's spouse needs the applicant because of his health conditions, which have included a tumor surgery, depression, heart attacks and two heart surgeries, the most recent being in September 2003. *Brief in Support of Appeal*, at 6. The record includes medical reports from 2003 which detail some of these claims, however, the record does not include evidence of the applicant's spouse's current medical state and how the applicant's presence would assist him. Based on the record, the AAO finds that the applicant's spouse would not face extreme hardship if he remained in the United States without the applicant.

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 she 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.