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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: FEB 26 2004

IN RE: [redacted]

PETITION: 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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and 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. The applicant married a legal permanent resident of the United States on October 24, 1998. On May 6, 2001, the applicant's husband became a naturalized citizen of the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See* District Director Decision, dated May 12, 2003.

On appeal, the applicant's husband asserts that he will suffer extreme hardship if the applicant is removed from the United States. In support of his assertion, the applicant's husband submits a letter written by him, dated June 4, 2003; a letter from the pastor of Miami Lakes Congregational Church, dated June 3, 2003; a letter from a psychiatrist treating the applicant's husband, dated May 24, 2003 and records with translations relating to the medical care of the applicant's mother in Colombia.

The record also contains a letter from the applicant's husband, dated March 25, 2003; a copy of the Colombian birth certificate of the applicant with translation; a copy of the photograph page of the Colombian passport of the applicant and a copy of the United States visitor visa issued to the applicant; employment verification for the applicant and her spouse; copies of financial and tax documents for the couple; a copy of the naturalization certificate of the applicant's spouse; a copy of the marriage certificate for the couple and a copy of the divorce decree with translation for the applicant's husband and his previous wife. 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 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 application, the record indicates that the applicant entered the United States with a visitor visa on May 30, 1998 with authorization to remain in the country until November 29, 1998. The applicant remained in the United States beyond her authorized period of stay. On October 24, 1998, the applicant married a legal permanent resident of the United States. On May 6, 2001, the applicant's husband became a naturalized citizen of the United States. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on October 11, 2001. In August 2002, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States.

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 November 29, 1998, the date ending her period of authorized presence in the United States, until October 11, 2001, the date of her proper filing of the Form I-485. The applicant is, therefore, 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.

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 herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) 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.

The applicant's husband states that the applicant suffered a miscarriage of their child in December 1998. The applicant's husband indicates that the pregnancy was difficult owing to the applicant's age and was "compounded with [sic] her anxiety of the uncertainty and the hardship if she returned to her country of birth, Colombia." *See* Letter from [redacted] dated March 25, 2003. The AAO notes that at the time of the applicant's pregnancy, the applicant was present in the United States on a valid visitor visa and had the option of seeking an extension of her lawful presence. Therefore, the AAO finds the assertions of the applicant's

husband implying a link between the uncertainty of the applicant's immigration status and the difficulty of her pregnancy unpersuasive. Furthermore, the events recounted by the applicant's husband occurred approximately three years prior to the applicant's filing of the Form I-485. The standard of extreme hardship requires that only in cases of "great actual or prospective injury to a qualifying party will the bar be removed." *See Matter of Nagi*, 19 I&N Dec. 245 (Comm'r 1984). While regrettable, the applicant's miscarriage is neither current nor prospective, rather it is a past occurrence that cannot be remedied by a waiver of inadmissibility.

The applicant's husband additionally contends that he is suffering from depression as a result of the applicant's immigration status. *See* Letter from , dated June 4, 2003 at 3. The applicant's husband submits a letter from his treating psychiatrist stating that if the applicant is sent to Colombia, the applicant's husband "will definitely suffer a serious decompensation and his depressed state will get much worse." *See* Letter from dated May 24, 2003. The record does not reveal the extent and nature of the psychiatric treatment that the applicant's husband receives. The record does not establish whether or not the condition of the applicant's husband can be stabilized with medication and/or therapy and it does not demonstrate the methods that have been employed to treat his psychiatric condition. In sum, the record does not provide the foundation for a finding of extreme hardship based on the psychiatric condition of the applicant's husband.

The record does not address the other factors identified in *Matter of Cervantes-Gonzalez*. The record makes no assertions regarding financial hardship to the applicant's husband as a result of the applicant's inadmissibility to the United States. The record does not make any assertions regarding the ability of the applicant's husband to relocate to Colombia in order to remain with the applicant beyond his statement that he does not want to live in Colombia because he fears for his life and the lives of his family. *See* Letter from Juan M. Taborda, dated June 4, 2003 at 4. The record does not substantiate the claims of fear by the applicant's husband. The record does not indicate any medical condition of the applicant's spouse that could not be adequately treated in Colombia and the record does not establish whether or not the applicant's spouse has family ties outside of 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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the evidence in the record, when considered in its totality reflects that the applicant has failed to establish that her U.S. citizen husband would suffer "extreme hardship" if she were denied a waiver of

inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 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.