U.S. Department of Homeland Security
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Washington, DC 20536

PUBLIC COPY

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: JAN 12 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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. 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. 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. The applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen 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, Attachment I-292, dated September 30, 2000. On appeal, counsel requests that the Immigration and Naturalization Service (Service), now Citizenship and Immigration Services (CIS), provide an additional 30 days to submit a statement or brief. Over three years have elapsed since the filing of the appeal and the record does not contain a brief from counsel. The appeal will therefore be adjudicated based on the record as it currently stands.

The record contains two affidavits of the applicant, dated September 19, 2000 and undated, respectively; an affidavit of the applicant's husband; a copy of the marriage application for the applicant and her husband; a copy of the divorce decree for the applicant's husband and his previous wife; a copy of the divorce decree for the applicant and her previous husband; a copy of the naturalization certificate of the applicant's husband; evidence of the employment of the applicant's husband; a copy and translation of the birth certificate of the applicant; copies of identification cards for the applicant and her husband and various financial documents for the couple. The entire record was reviewed and considered in rendering a decision.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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 application, the record indicates that the applicant entered the United States as a nonimmigrant visitor for pleasure on April 2, 1997. The applicant's visa provided permission to remain in the United States until September 30, 1997. The applicant remained in the United States beyond her authorized period of stay without permission from the Service (CIS). On July 15, 1997, the applicant was divorced from her first husband, a national and citizen of Honduras. The applicant married a naturalized U.S. citizen, her second husband, on August 5, 1997 and attempted to adjust status as the spouse of a U.S. citizen. However, the application was denied, as the applicant did not reside in Florida for six months prior to filing the petition of divorce, as required by Florida law. The applicant filed an application for Temporary Protected Status (TPS) on February 19, 1999. The applicant remarried her second husband on July 21, 1999 and filed a new Application to Register Permanent Residence or Adjust Status (Form I-485) on August 13, 1999.

The proper filing of an affirmative application for TPS or adjustment of status has been designated by the Attorney General [now 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 September 30, 1997, the date that her period of authorized presence as a nonimmigrant visitor to the United States ended, until February 19, 1999, the date of her proper filing of the Form I-821 (Application for Temporary Protected Status). 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.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

Counsel offers the affidavits of the applicant and her husband as evidence of the extreme hardship to be suffered by the applicant's husband in the event that her waiver is denied. The affidavit of the applicant's husband indicates that both he and the applicant suffer from tension and anxiety as a result of the applicant's immigration situation. The applicant's husband states that he suffers from gastrointestinal pain and has had to

incur expenses as a result of numerous visits to the doctor. *See* Affidavit of Orlando Antonio Carcamo. The record does not contain evidence of illness or medical treatment beyond the assertions of the applicant's spouse. The applicant's spouse indicates that he relies on the applicant to "take care of the bills, banking, clothing, etc." while he works. However, the record does not establish that the applicant is the only person positioned to assist her husband in this manner. Further, the record implies that the applicant's husband managed these basic needs on his own or with other assistance prior to his marriage to the applicant.

The applicant's husband asserts that it would be difficult for him to earn a living in Honduras sufficient to support his wife and her children. The AAO notes that the applicant's husband, as a U.S. citizen, is not required to depart from the United States as a result of a denial of the applicant's waiver. Further, the record does not establish that the applicant's husband is responsible for providing financially for his wife's children from a prior marriage. The record does not evidence any level of communication or support by the applicant or her spouse with or for the applicant's children.

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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, if he remains in the United States, 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 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.