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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEGUCIGALPA Date: AUG 12 2009

IN RE: [redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting 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 record reflects that the applicant is a native and citizen of Nicaragua 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 is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her husband and child in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated April 19, 2007.

The record contains letters from the applicant and her husband, [redacted], and a letter from a registered pharmacist and asthma educator. The entire record was reviewed and considered in rendering this 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 this case, the officer in charge found, and counsel does not contest, that the applicant entered the United States without inspection in June 2000 and remained until July 2006 when she returned to Nicaragua. The applicant accrued unlawful presence for over six years. She now seeks admission within ten years of her 2006 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(I) 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. Once extreme hardship to a qualifying relative 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's husband, claims that since his wife departed the United States, he has suffered extreme hardship financially and emotionally. He states he has a "very successful" painting business in the United States and that his wife worked while living in the United States, helping to financially support their household. [redacted] claims that since his wife moved back to Nicaragua, she has not worked because she is taking care of their daughter and that he must now work many extra hours to support their family. In addition, claims he is "in a great state of depression." He states that his daughter, [redacted], a U.S. citizen who is currently five years old, "was born with a medical condition that needs long term continuous medical treatment." According to [redacted] his daughter has been hospitalized twice and "her treatment is very specialized and not available in Nicaragua." He states he is "afraid [his daughter] will die[]" if she continues living in Nicaragua with his wife. *Letter from* [redacted], dated August 9, 2006.

A letter from a registered pharmacist and asthma educator states that [redacted] is enrolled in the "Asthma HELP Program." According to the pharmacist, in order to be eligible for the program, a patient must be diagnosed with persistent asthma and have had two or more emergency room visits relating to asthma exacerbations in the last six months. The pharmacist states that since [redacted] met all of the qualifying criteria, the applicant enrolled her in the program in order to learn about "asthma disease management and the dangers related to poor asthma control." The pharmacist also states that

prior to [redacted] going to Nicaragua, her asthma was "well controlled as a result of [the applicant's] dedicated participation and willingness to learn about asthma disease management." Furthermore, the pharmacist states that:

> The current climate condition and energy restrictions in Nicaragua make it very difficult for [the applicant] to manage her daughter's asthma symptoms and exacerbations. . . . Humid conditions along with restricted access to electricity for [redacted] nebulizing machine puts this child at risk of having a life-threatening exacerbation.

The pharmacist asks that the applicant, [redacted] primary care taker, be permitted to return to the United States with [redacted] as her asthma needs to get back under control. *Letter from* [redacted] dated July 24, 2006.

After a careful review of the record, there is insufficient evidence to show that [redacted] has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that has endured and will continue to endure hardship as a result of the denial of his wife's waiver application and is sympathetic to the family's circumstances. However, there is insufficient record evidence to show that the level of hardship has risen to the level of extreme hardship. Although the record shows the couple's daughter, [redacted] has asthma, significantly, neither the applicant nor her husband have provided any information regarding how she has been doing in Nicaragua the past three years. Similarly, neither the applicant nor her husband have provided any details regarding how often [redacted] requires the use of a nebulizing machine and there is no evidence addressing the purported restricted access to electricity in Nicaragua. In addition, there is no background country evidence documenting that whatever treatment [redacted] requires is unavailable in Nicaragua.

With respect to [redacted] financial hardship claim, there is insufficient evidence in the record to show extreme financial hardship. [redacted] does not give any details regarding his financial situation and there is no information in the record addressing his monthly expenses, such as rent or mortgage. There are no tax or financial documents in the record and no evidence verifying the income generated by [redacted] "very successful" painting company. There is no evidence verifying the applicant's former employment in the United States or to what extent she helped financially assist the household. Without more detailed information, the AAO is not in the position to conclude that the denial of the applicant's waiver application causes extreme financial hardship to [redacted]. In any event, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Furthermore, [redacted] does not discuss the possibility of moving to Nicaragua to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to

him. Rather, their situation, if [redacted] decides to remain 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 based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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 husband 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)(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.