U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date: MAR 30 2007

IN RE: [redacted]

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:

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.

Ellen C. Johnson

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 his last departure from the United States. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his naturalized United States citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge,* dated July 25, 2005.

On appeal, the applicant's spouse asserts that she and the applicant cannot be separated from each other. *Form I-290B and attachment.*

In support of these assertions the record includes, but is not limited to, photographs of the applicant and his spouse; statements from the applicant's spouse; photocopies of bills for the applicant and his spouse; and a letter from [redacted] 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 application, the record indicates that the applicant entered the United States without inspection in June 2001 and returned to Honduras in April 2005. *Memorandum, Embassy of the United States of America, Tegucigalpa, Honduras*, dated May 13, 2005. The applicant accrued unlawful presence from June 2001, the date he entered the United States, to April 2005, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his April 2005 departure from the United States. 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 violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Honduras or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Honduras, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the Dominican Republic and both of her parents reside there. *Form G-325A for the applicant's spouse.* The record fails to note whether the applicant's spouse has any family in Honduras. The applicant's spouse speaks Spanish, as indicated by a statement she submitted in Spanish dated April 21, 2005. The record includes a payment notice sent to the applicant's spouse by a collection agency seeking payment of an outstanding bill at Winthrop University Hospital where the applicant's spouse was treated on December 15, 2003. *See payment notice, Professional* [redacted], dated May 18, 2005. The record fails to address the reason that the applicant's spouse was admitted to the hospital. Furthermore, there is nothing in the record addressing whether the applicant's spouse currently has any health condition for which she needs treatment and if so, whether such treatment is available in Honduras. There is nothing in the record addressing country conditions in Honduras, and how those country conditions may affect the applicant and his spouse. When looking at the aforementioned

factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Honduras.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse states that she is suffering financially because her husband is in Honduras. *Statement from the applicant's spouse*, dated September 6, 2005. In support of this statement, she has submitted photocopies of her credit card, utility, car, mortgage, and insurance bills, as well as her notices from debt collectors. Although the AAO recognizes the expenses incurred by the applicant and his spouse, the record does not demonstrate that the applicant is unable to contribute to his family's financial well-being from Honduras. Furthermore, the record shows that the applicant's spouse has worked in a factory from 1980 through the present time. *Form G-325A for the applicant's spouse*. There is nothing in the record to demonstrate the level of income earned by the applicant's spouse or that she is unable to contribute to her family's expenses from her employment earnings.

The applicant's spouse indicated that she is suffering serious emotional distress and that she and the applicant cannot be separated from each other. *Statement from the applicant's spouse*, dated September 6, 2005; *Form I-290B and attachment*. 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 spouse will endure hardship as a result of separation from the applicant. However, the record contains no evidence that would distinguish the distress felt by the applicant's spouse from that of other individuals separated as a result of deportation or exclusion. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

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 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.