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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: PANAMA Date: FEB 07 2008

Related: [redacted]

IN RE: Applicant: [redacted]

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Mexico (U.S. Embassy, Panama). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant is a native and citizen of Colombia. 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 presently seeks a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (I-601 Application) was denied accordingly.

On appeal the applicant indicates that her husband is ill and unable to care for his daily and personal needs without her assistance. The applicant indicates that the evidence in the record establishes her husband will suffer extreme hardship if the applicant's I-601 application is denied.

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

> [A]ny 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.

The record reflects that the applicant entered the United States without parole or admission in April 1988. The applicant remained in the U.S. unlawfully, and she married a U.S. citizen [redacted] in Las Vegas, Nevada on September 14, 2004. The applicant departed the United States voluntarily on December 10, 2005. She has remained outside of the United States since that date.

The Board of Immigration Appeals (Board) clarified in its decision, *In re Rodarte-Roman,* 23 I&N Dec. 905, 908 (BIA 2006), that a:

> "[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years.

Because the applicant was unlawfully present in the United States for more than one year between April 1988 and her departure in December 2005, and because the applicant is seeking admission less than ten years after her December 2005 departure from the United States, the applicant is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

> [T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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.

The applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act, extreme hardship waiver purposes.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

> [T]he 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 Board held in *Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra. See also, Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991.)

The record contains the following letters written by the applicant's husband (Mr. Barr), relating to his extreme hardship claim:

> An undated letter stating that the applicant has lived with him since December 2001, and that since December 2001 she has assisted him, without complaint, with daily living activities such as dressing, bathing, shaving, cooking and general body upkeep. [redacted] states that without his wife's assistance, he would be unable to maintain his independent living status or to continue living at home. He states that he and the applicant married on [redacted] and that they have had a wonderful relationship since that time.

> Identical September 12, 2007 and October 19, 2007 letters indicating that [redacted] has Multiple Sclerosis, and stating that: since writing his initial September 23, 2006 letter, he was hospitalized twice (for five days in May 2007 for methicillin resistant staphylococcus, and for three days in September 2007 for chest pain); that he has no control over his bowels or urine and wears a diaper; that he's lost most of the functions in his left hand, arm, leg, and femur, and that he's beginning to lose eyesight in both eyes. He states that because his wife is unable to assist him, he is researching rest homes and will be moving into one shortly.

A September 27, 2007 letter stating that on September 2, 2007, he was found on the street by police after he fell and could not get up. [redacted] indicates that the police took him home and that it took days for him to get up, eat and make a doctor's appointment. [redacted] states that he suffered extensive bruising and pain from the incident, and that X-rays were taken due to pain and bruising of his thigh, hip, buttock and lower back. He states he does not remember falling and that he fears falling again with no one around to assist him. He also states that he was in the hospital in May, December and September.

An October 25, 2007 letter stating that he has difficulty bathing, shopping, cleaning, and making meals, and stating that he is experiencing eye problems related to his Multiple Sclerosis. [redacted] states that he needs his wife's daily assistance or his life, as he knows it will be over.

A November 10, 2007 letter stating that on November 2, 2007, he fell and injured his left wrist and right hip, and stating that it is very difficult for him to get around, and that it is difficult for him to provide for himself with his wife's help.

A November 22, 2007 letter stating that he needs his wife's assistance, that it is a life and death situation, and that he is experiencing signs and symptoms of:

> [O]ptic neuritis, diplopia, nystagmus, internuclear opthalmoplegia, paresis, quadraparesis, paraplegia, spasticity, dysarthria, muscle atrophy, spasms, cramps, hypotonia, clonus, myoclonus, myokymia, foot drop left side, parathesia, neuralgia, neurogenic pain, ataxia, intention tremor, trigeminal neuralgia, ataxia, vestibular ataxia, speech ataxia, dystonia, dysdiadochokinesia, frequent micturation, bladder spasticity, constipation, fecal urgency, Aphasia, fatigue, inappropriately cold body parts and autonomic nervous symptom problems.

A statement provided on appeal stating that: he was diagnosed with multiple sclerosis in July 1997; that he takes two medications as needed for pain and muscle cramps; that he has paralysis in the left side of his face and has vision problems and some loss of vision; that he has lost most functions in his left arm and lost some function in his right arm, that he is unable to write with his left hand; that his left leg has lost most function and his right leg has lost some function; that his balance is not good and he has to hang on to walls and furniture to get around, and that he uses an electric cart to get around. [redacted] states that he relies on his wife's assistance with his daily living activities, and that without her help he will need to apply for State assistance and assisted care.

The record contains the following medical evidence:

An October 21, 2005 letter from [redacted] of the Beaver Medical Group, L.P., stating that [redacted] would be unable to "[t]ake care of his 'activities' of daily living, including bathing and preparation of meals if he were alone."

An October 2, 2007 letter from [redacted] stating that [redacted] has been her patient for four years and that he has progressive multiple sclerosis. The letter states that [redacted]s

"[s]ymptoms include weakness in both upper and lower extremities. He requires assistance for activities of daily living including shopping, bathing, cleaning and preparing meals. He is at this time essentially wheel-chair bound."

September 26, 2007, X-ray results reflecting that the applicant has minimal arthritis in his back and right and left hip.

July 5, 2007, vision exam results.

[redacted] prescription drug history between March 24, 2003 and October 3, 2007.

The record additionally contains an undated letter written by the applicant, stating that she is requesting a waiver because it would be an extreme hardship for her husband to live without her assistance.

Upon review of the totality of the evidence, the AAO finds that the applicant has established that her husband would suffer extreme hardship if he remains in the U.S. without her. The medical evidence contained in the record reflects that [redacted] suffers from progressive multiple sclerosis, and that his symptoms include weakness in both his upper and lower extremities. The evidence in the record reflects that [redacted] requires assistance for daily living activities, including shopping, bathing, cleaning and preparing meals, and the medical evidence reflects that [redacted] is essentially wheel-chair bound. The applicant established that in the past her husband has relied on her to assist him with his daily activities, and the applicant established that Mr. [redacted] is having difficulty living independently without his wife's help. Accordingly, the AAO finds that the applicant has established that her husband would suffer hardship beyond that normally suffered upon the departure of a family member if he remains in the United States without the applicant.

The applicant made no claim, and provided no information or evidence, relating to whether [redacted] would suffer extreme hardship if she were denied admission into the United States, and [redacted] moved with her to Colombia. Accordingly, the AAO finds that the applicant has failed to establish that [redacted] would suffer extreme hardship if he moved to Colombia with the applicant.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that [redacted] would suffer extreme hardship if he moves with the applicant to Colombia, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.