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U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date: NOV 14 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Tegucigalpa, Honduras and 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 admission within ten years of her last departure from the United States. The applicant is the wife and mother of U.S. citizens and seeks a waiver of inadmissibility in order to reside in the United States with her family.

The officer in charge found that the record failed to establish that the applicant's spouse, [redacted], would suffer extreme hardship if her waiver request were to be denied. *Decision of the Officer in Charge,* dated May 24, 2006.

On appeal, the applicant's spouse submits a statement and a birth certificate for the daughter born to him and the applicant on January 20, 2005 in Minnesota. He states that the applicant's removal has created extreme hardship for his family. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated June 13, 2006.

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.

The officer in charge based his finding of inadmissibility under section 212(a)(9)(B)(i) of the Act on the applicant's accrual of unlawful presence from June 2002, when she entered the United States without inspection until May 2005, when she returned to Honduras for her immigrant visa interview.

The record indicates that at the time of her consular interview in Tegucigalpa on July 26, 2005, the applicant testified that she had entered the United States without inspection on June 21, 2002 and had remained in the United States until she departed on May 23, 2005 for her immigrant visa interview. As the applicant accrued more than one year of unlawful presence and is seeking admission to the United States within ten years of her 2005 departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act .

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. **In the present case, the applicant's only qualifying relative is** [redacted]

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

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

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [redacted] in the event that he relocates to Honduras. The record, however, does not address the impact of relocation on Mr. [redacted] Accordingly, the AAO is unable to find that joining the applicant in Honduras, the country of Mr. [redacted]s birth, would constitute an extreme hardship for him.

The second part of the analysis requires the applicant to prove that would suffer extreme hardship if he remains in the United States without the applicant. In statements, dated April 3 and June 13, 2006, [redacted] asserts that he is affected in countless ways by his separation from the applicant. He indicates that he is particularly concerned about the effect of the applicant's absence on his two daughters from a previous relationship, particularly the older of these daughters. Mr. [redacted] reports that, as a result of missing her stepmother, his oldest daughter is continuously sad and does not want to go to school. He indicates that he has considered sending her to a psychologist to help her with her emotional problems. Mr. [redacted] states that he is worried for his daughters and asks that this hardship in his life be taken into consideration. He also contends that his youngest daughter, who is now with the applicant in Honduras, has a right to grow up in the United States as she is a U.S. citizen and that it would be best if the applicant came to the United States with her as she is still an infant and needs her mother.

The AAO acknowledges that has experienced hardship as a result of the applicant's inadmissibility to the United States. It notes, however, that the record offers no documentary evidence that would distinguish the hardships he has and would face from those normally experienced by individuals whose spouses reside outside the United States as a result of removal or inadmissibility. While [redacted] has stated that his oldest daughter is experiencing emotional problems as a result of her separation from the applicant, the applicant's stepdaughter is not, as previously noted, a qualifying relative for the purposes of this waiver proceeding and the record fails to provide documentary evidence of her emotional state or the impact of her problems on [redacted]

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO does not find the applicant to have established that [redacted] would face extreme hardship if her waiver request were denied and he remained in the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that [redacted] would face extreme hardship if the applicant is refused admission. Accordingly, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.