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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date: JUL 07 2009

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.

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).

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 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 ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.[1]

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 3, dated March 16, 2007.

On appeal, the applicant states that she disagrees with the denial of the applicant's visa, readmittance and extreme hardship case. *Form I-290B*, received April 16, 2007.

The record includes, but is not limited to, the applicant's statement and the applicant's spouse's statements. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1997 and departed the United States in 2006. The applicant accrued unlawful presence from the date he entered the United States in 1997 or April 1, 1997, whichever date is later, until the date he departed the United States in 2006. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his 2006 departure.

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

[1] The record indicates that the applicant may also have two U.S. citizen children, as the Form I-601 lists one and the applicant's spouse has stated that she was expecting a child around September 18 or 20, 2006. *Form I-601*, dated May 4, 2006; *Applicant's Spouse's Statement*, at 1, dated May 15, 2006

> 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.

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. Hardship to the applicant or his children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. Once 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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 a qualifying relative must be established whether the qualifying relative resides in Honduras or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Honduras. The applicant states that he is living in a one bedroom apartment, he is working dead end jobs, sometimes he goes to bed hungry, and it would be an act of cruelty to bring his family to Honduras to live in substandard conditions. *Applicant's Statement*, received May 7, 2007. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for Temporary Protected Status (TPS) due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. 73 Fed. Reg. 57133, 57134 (Oct. 1, 2008). Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. *Id.* As such, requiring the

applicant's U.S. citizen spouse to relocate to Honduras in its current state would constitute extreme hardship to her.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that she began a drywall business, she wants the applicant to partner with her, the applicant is very knowledgeable about the construction field, the applicant is proud of his family and children, the children can learn from him by having him around, and the family is not complete without the applicant. *Applicant's Spouse's Statement*, at 1-2, dated May 15, 2006. The applicant states that his family is experiencing insurmountable hardship, which has put his marriage in jeopardy due to emotional, mental and economic strains. *Applicant's Statement.* The applicant states that his spouse's maternity forced her to leave the dry wall business, which was their main source of income; she is living at her mother's house and is on welfare; she is suffering from a sort of depression; she is experiencing hopelessness, loss of appetite and lack of sleep; and she is crying herself to sleep. *Id.* However, the record does not include supporting documentary evidence of the emotional, financial or any other forms of hardship that the applicant indicates his spouse is experiencing. For instance, the record does not include supporting evidence that the applicant's spouse closed her drywall business, is on welfare or is depressed. The record also does not include supporting evidence of the second child's birth, or of the children's hardship and how their hardship is affecting the applicant's spouse. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record reflects that the applicant's spouse is experiencing difficulty without the applicant. However, it does not include sufficient evidence to establish that she would experience extreme hardship upon remaining in the United States without the applicant.

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.

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.