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

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APR 11 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center. 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 Venezuela 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 United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Director,* dated July 18, 2005.

On appeal, counsel asserts that the Citizenship and Immigration Services (CIS) erred as a matter of law and fact in denying the application, also that CIS misapplied the waiver standard and abused its discretion. *Form I-290B.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; a statement from the mother of the applicant's spouse; a statement from the applicant; a letter from the employer of the applicant's spouse; a photocopy of the applicant's Canadian work permit; country condition reports for Venezuela; a photocopy of the applicant's Venezuelan passport; a photocopy of the applicant's spouse's U.S. passport; and copies of telephone bills and credit card statements for the applicant's spouse. 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-
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> > . . . .
> >
> > (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 was admitted to the United States on September 11, 1996 with a B-2 nonimmigrant visa valid until March 10, 1997. *Form I-94.* The applicant departed the United States in September 2001 and went to Canada. *Form G-325A, Biographic Information sheet, for the applicant.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until September 2001, the date he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his September 2001 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's waiver request is denied. 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 (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 qualifying relative must be established in the event that she resides in Venezuela[1] 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 relocates to Venezuela, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were both of her parents. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not indicate whether the

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[1] The applicant is a native and citizen of Venezuela. *See Venezuelan passport for the applicant.* Although the applicant states that he fears returning to Venezuela (*Statement from the applicant*, dated May 10, 2004), the AAO does not have the authority to make a determination as to whether the applicant may stay in the United States based upon his fear of return. The asylum offices of the United States have jurisdiction over such claims. At the time of filing, the applicant had an asylum case pending with the Canadian government. *Statement from the applicant*, dated May 10, 2004. His asylum request was subsequently denied. *Attorney's brief.* As the applicant does not have legal status in Canada, the AAO's analysis for extreme hardship purposes will be based on the applicant's citizenship in Venezuela.

applicant's spouse speaks Spanish. The applicant states that it would be extremely dangerous for his spouse, a U.S. citizen, to go to Venezuela. *Statement from the applicant*, dated May 10, 2004. The record includes numerous country condition reports documenting the general political climate under Venezuelan president [redacted] *See country condition reports*. While the AAO acknowledges the applicant's assertions and country condition reports, it notes that the record fails to demonstrate the specific reasons why it would be extremely dangerous for the applicant's spouse to go to Venezuela. The applicant's spouse is a Research Librarian with the Council on Foreign Relations. *Letter from* [redacted] *Director, Library and Research Services, Council on Foreign Relations*, dated June 2, 2004. She holds a Bachelor of Science degree and a Masters of Library Science. *Id.* The employer of the applicant's spouse states that her position of Research Librarian at the Council on Foreign Relations is truly a unique one and it is highly unlikely that she would be able to serve in a similar capacity elsewhere. *Id.* The AAO notes that while the financial impact of departure from this country is to be considered when evaluating extreme hardship, the applicant's spouse is not required to obtain a similar job in a foreign country. There is nothing in the record that shows the applicant or his spouse would be unable to find employment in Venezuela in order to support themselves, particularly given the high level of education of the applicant's spouse. The record also fails to demonstrate the expenses that the applicant and his spouse would have and how their lives would be financially affected if the applicant's spouse resided in Venezuela. Additionally, the record fails to address whether the applicant or his spouse has any physical or mental health condition that would be affected if the applicant's spouse resided in Venezuela. 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 Venezuela.

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 was born in the United States and while her father is deceased, her mother currently lives in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse asserts that separation from the applicant has been difficult, but their commitment to each other remains strong and they are still very much in love and happy with each other. *Statement from the applicant's spouse*, dated November 4, 2004. It is their hope to start a family, but they cannot make any plans or move forward until they can be together to raise their children. *Id.; See also attorney's brief.*

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 does not indicate that her situation, if she remains in the United States, is different from that of other individuals separated as a result of removal and does not rise to the level of extreme hardship. 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 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)(i)(II) 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.