identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: TEGUCIGALPA Date: MAR 31 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The field office director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated June 27, 2007.

On appeal, the applicant asserts that her husband will suffer extreme hardship if she is prohibited from residing in the United States. *Statement from the Applicant*, submitted September 5, 2007.

The record contains statements from the applicant and the applicant's husband; a copy of the applicant's son's permanent resident card; a copy of the applicant's husband's naturalization certificate; a letter regarding the applicant's employment as a housekeeper; a copy of a rent receipt; documentation of the applicant's compensation from employment; a letter from the applicant's church, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 record reflects that the applicant entered the United States without inspection on or about July 20, 1998. On August 16, 1999, the applicant filed a Form I-821 application for temporary protected status. Her application was approved on April 7, 2000, and she filed subsequent applications to maintain her temporary protected status. She departed the United States in or about October 2006. Accordingly, the applicant accrued unlawful presence from July 20, 1998 until she filed a bona fide application for temporary protected status on August 16, 1999. This period totals over one year. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

On appeal, the applicant's husband notes that the applicant was in temporary protected status during her stay in the United States. However, as discussed above, she did not file her first Form I-821 application for temporary protected status until she had already been in the United States without a legal status for more than one year. Thus, the applicant requires a waiver of inadmissibility under section 212(a)(9)(B)(v) 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 lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 to a qualifying relative. These factors include the 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.

On appeal, the applicant asserts that her husband will suffer extreme hardship if she is prohibited from residing in the United States. *Statement from the Applicant* at 3-6. The applicant notes that her husband immigrated from Mexico to the United States in 1981, and he has no children and few relatives in the country. *Id.* at 4. She states that her husband has been employed as a room service waiter for 13 years. *Id.* She provides that her husband has never been to Honduras, he has no family

there, and he will not relocate there should the present waiver application be denied. *Id.* The applicant explains that her husband is 51 years of age, and thus he would have difficulty assimilating to a new country. *Id.* She provides that her husband would have difficulty finding employment in Honduras due to his age, and he speaks a different form of Spanish. *Id.*

The applicant explains that her son came to live in the United States at age eight after having been raised by his grandparents. *Id.* at 4-5. She states that her husband has worked to establish a bond with her son, and that he loves him as his own child. *Id.* at 5. The applicant asserts that her husband is experiencing additional emotional hardship due to separation from her son. *Id.* at 5-6.

The applicant's husband states that his parents and siblings reside in Mexico, and that he has few relatives in the United States. *Statement from the Applicant's Husband*, dated August 28, 2007. He notes that he became a lawful permanent resident in or about 1988. *Id.* at 1. He indicates that he has no intention of returning to Mexico or relocating to Honduras. *Id.* at 2. He provides that he has become accustomed to life in the United States, yet he loves the applicant and he would face difficulty being separated from her. *Id.*

The applicant's husband indicates that life would be difficult for him in Honduras due to a lack of employment opportunities and age discrimination. *Id.* He provides that he will endure economic hardship as a result. *Id.*

The applicant's husband expresses that he is close with the applicant and that he will suffer emotional hardship if he is separated from her. *Id.* at 2-3. He notes that he speaks with the applicant almost daily. *Id.* at 3. He states that their son resides with him in the United States, but that he may join the applicant in Honduras which will deprive him of the opportunities of residence in the United States. *Id.* at 4.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not shown that her husband will encounter extreme hardship should he remain in the United States without her. The applicant's husband expressed that he is enduring emotional hardship due to separation from the applicant. The AAO acknowledges that the separation of spouses often creates psychological suffering. However, the applicant has not distinguished her husband's emotional challenges from those commonly expected when spouses are separated due to inadmissibility.

Federal court and administrative decisions have 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 record contains references to hardships experienced by the applicant's son. Direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO has examined the hardship that the applicant's son is enduring due to the applicant's absence, including the emotional consequences of separation from the applicant, and the possibility that he may join her in Honduras and forego the benefits of residence in the United States. The AAO observes that the applicant's son came to reside with her and her husband at the age of eight years, and that their family has encountered a unique situation in forming parent-child relationships. Thus, the applicant's son will face uncommon challenges should he now be separated from either the applicant or the applicant's husband. It is evident that the applicant's husband will share in their son's difficulty. However, the applicant has not sufficiently related her son's hardship to her husband's, or established that her son's challenges will elevate her husband's hardship to an extreme level.

The applicant has not asserted that her husband will encounter other elements of hardship should he remain in the United States. Considering all stated elements of hardship to the applicant's husband in aggregate, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he remain in the United States.

The applicant's husband provided that he will not relocate to Honduras should the present waiver application be denied, in part due to unfavorable employment and economic conditions as well as his strong attachment to the United States. The AAO acknowledges that the applicant's husband has held consistent employment and resided in the United States for a lengthy duration. It is evident that he would face emotional challenges should he uproot his life in the United States and relocate to an unfamiliar country. We also take administrative notice that Honduras has recently experienced a coup and political instability, substantial restrictions on freedom of expression, assembly, and association, as well as human rights abuses. *See United States Department of State 2009 Human Rights Report: Honduras*, dated March 11, 2010. The record supports that the applicant's husband would face substantial hardship should he join the applicant in Honduras.

However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation).

In the present matter, the applicant's husband would not face extreme hardship should he remain in the United States for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II)

of the Act. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a 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.