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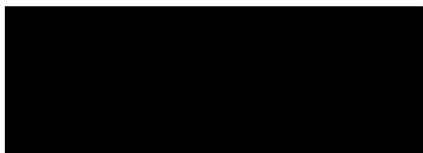
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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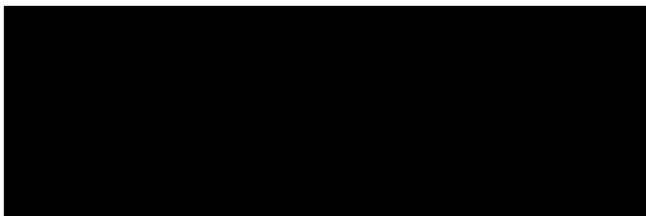


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 08 2008**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v). 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 Argentina. The director found the applicant to be inadmissible to the United States under sections 212(a)(2)(A) and 212(a)(9) of the Act, 8 U.S.C. §§ 1182(a)(2)(A) and 1182(a)(9), for having been convicted of a crime involving moral turpitude and being unlawfully present in the United States. The record indicates that the applicant was convicted of Misrepresentation of a Material Fact to a United States Customs Officer in 1989. The record further indicates that the applicant entered the United States without inspection in 1998, after having been in the United States without authorization since 1991. The applicant is the beneficiary of an approved Petition for Alien Relative filed on his behalf by his U.S. citizen wife. He presently seeks a waiver of inadmissibility claiming that his inadmissibility would cause extreme hardship to his family.

The director found the applicant to be inadmissible on the basis of his conviction and his unlawful presence. The director further found that the applicant had failed to establish that his inadmissibility would result in extreme hardship to a qualifying relative. Accordingly, his application for a waiver of inadmissibility was denied.

On appeal, the applicant, through counsel, maintains that his wife would face extreme hardship should the waiver be denied. *See Applicant's Appeal Brief.* The appeal is accompanied by an affidavit executed by the applicant's wife, a letter from Canarsie Aware, Inc. verifying that the applicant's wife's son is in drug rehabilitation treatment, and a letter from the applicant's wife's physician stating that she has severe, active, sometimes life-threatening asthma.

Section 212(a)(2)(A) of the Act states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marihuana if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –
- (i) ... the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
- (I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure . . . is inadmissible.
 - (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 AAO notes that the criminal activity that resulted in the applicant's conviction occurred in 1988. Because more than 15 years have elapsed since, the AAO finds that the applicant is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act. Nevertheless, the AAO finds that the applicant is inadmissible under section 212(a)(9) of the Act, as an alien who is unlawfully present in the

United States.¹ The question then remains whether the applicant qualifies for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself or the applicant's children are not permissible considerations under the statute, except as they result in hardship to the qualifying relative.

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. 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).

In support of his claim, the applicant submits an affidavit executed by his wife, a letter from his wife's son's drug rehabilitation treatment center, and a letter from his wife's physician. The record indicates that the applicant and his wife were married in 2001. The applicant's wife is a native of the Dominican Republic, and citizen of the United States since 1997. The applicant's wife states that she would experience extreme emotional and financial hardship should the applicant be denied the waiver. Specifically, the applicant's wife states that her adult son is undergoing drug rehabilitation treatment and has recently been diagnosed with HIV. There is no documentation in the record regarding the latter. There is also no evidence of the extent to which the applicant's wife cares for or supports her son, or with regards to the availability of care from another family member. The applicant's children are teenagers. They reside with their mother, but frequently visit the applicant and his wife. The record indicates that the applicant's wife suffers from asthma. There is no indication, however, that the applicant's wife's condition requires the applicant's care, or that treatment for asthma is unavailable in Argentina. The record includes a copy of a deed, establishing that the applicant's wife and daughter purchased a property

¹ The applicant began accruing unlawful presence on April 1, 1997 (the effective date of the Illegal Immigration and Immigrant Responsibility Act of 1996). The unlawful presence bar was triggered by the applicant's departure and reentry to the United States in 1998, and it is undisputed by the applicant. The director's decision in this regard is therefore affirmed.

in 1990. There is no indication in the record regarding the applicant's wife's employment, the age or whereabouts of her daughter, or other family and community ties.

A careful review of the record in its entirety reflects that the applicant's spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in her circumstances. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The AAO notes the applicant's spouse's reluctance to relocate to Argentina. The applicant's spouse, as a U.S. citizen, is not required to relocate. There is no evidence in the record to establish that she would experience extreme hardship should she relocate. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). In addition, while the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain evidence to show that the hardship faced by the applicant's spouse due to the separation from the applicant rises to the level of extreme. The AAO finds that the circumstances facing the applicant's spouse occur anytime a couple is separated and do not rise to the level of "extreme" either individually, or in the aggregate.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility rests with the applicant. 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.