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FILE:

Office: TEGUCIGALPA, HONDURAS

Date: MAR 24 2008

IN RE:

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:

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated June 15, 2006.

On appeal, counsel asserts that the officer-in-charge failed to properly consider hardship and the totality of the circumstances, and failed to properly apply the case law cited in the decision. *Form I-290B*, received July 17, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's and applicant's spouse's statements, birth certificates for the applicant's spouse's children, the applicant's spouse's children's statements, family photographs, country conditions information, and financial documents and bills. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in April/May 2001. The applicant remained in the United States until June 5, 2005. Therefore, the applicant accrued unlawful presence from the date he entered the United States in April/May 2001 until he departed the United States for his June 5, 2005 consular interview. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. Therefore, the applicant is 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.

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.

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. 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).

Counsel addresses cases cited by the officer-in-charge and other relevant extreme hardship cases. Counsel asserts that the applicant's case differs from *Matter of Ngai*, 19 I&N Dec. 245 (Commissioner 1984) in that the applicant in *Matter of Ngai* was employed in Hong Kong, there was no financial burden to her husband and there was a 28 year voluntary separation in which the parties never saw each other. *Brief in Support of Appeal*, at 5-6, undated. Counsel states that the applicant's case differs from *Matter of W*, 9 I&N 1 (BIA 1960) in that the respondent in that case had a criminal record and immigration violations. *Id.* at 7-8. Counsel also states that *Matter of Shaughnessy*, 21 I&N Dec. 810 (BIA 1968) and *Matter of Perez*, 96 F.3d 390 (9<sup>th</sup> Circuit 1996) did not involve a forced separation of spouses and that *Matter of Perez* states that all factors must be considered and separation of a child and parent cannot always be dismissed as a parental choice. *Id.* at 8-9. Furthermore, counsel asserts that the applicant's case differs from *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) in that the respondent in that case asserted economic hardship but purchased a \$75,000 business and had \$44,000 in assets. *Id.* at 10-11.

The AAO notes that the facts of the applicant's case do not parallel those of the cases cited by the officer-in-charge. **However, this does not establish a basis for a finding of extreme hardship.** Furthermore, the officer-in-charge cited *Matter of Ngai*, *Matter of W* and *Matter of Shaughnessy* not for their similarities to the present case, but in order to establish that the common results of separation do not amount to extreme hardship. The AAO will evaluate the relevant hardship factors and the evidence submitted in order to determine whether the record reflects extreme hardship to the applicant's spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of non-exhaustive factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen family ties to the United State, 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 spouse must be established in the event that she relocates to Nicaragua or in the event that she remains in the United States, as there is no requirement to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Nicaragua. The AAO notes that Nicaragua is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and subsequent storms, and the subsequent inability of Nicaraguans to handle the return of its nationals. *Federal Register*, Volume 72, No. 102, pp. 29534-29535, Tuesday, May 29, 2007, Notices. As such, requiring the applicant's lawful permanent resident spouse to relocate to Nicaragua in its current state would constitute extreme hardship.

In addition, counsel states that the applicant's spouse has no family in Nicaragua, she is not from Nicaragua, her parents and three children are in the United States and she has no ties to Nicaragua, other than the applicant. *Brief in Support of Appeal*, at 7. Counsel states that the applicant's spouse has a job and home in the United States. *Id.* at 13.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse will continue to suffer due to separation from the applicant. *Id.* at 12-13. Counsel states that the applicant's spouse has suffered anxiety from the uncertainty of the applicant's fate and her separation from him. *Id.* at 13. Counsel states that since the applicant left the United States, his spouse has struggled to make ends meet and has had to take on additional employment. *Id.* at 14. The applicant's spouse states that she is lonely and lost without the applicant, she fell into a great depression when she received the denial letter, she cannot visit the applicant due to financial reasons, the applicant is her best friend, her father comes from Texas to help her even though he has cancer, her mother is on dialysis and she cannot visit her parents due to work. *Applicant's Spouse's Statement*, at 1, dated July 27, 2006. The applicant's spouse's daughter states that the applicant's spouse is struggling emotionally and financially, she would have more time to be with the children and to sleep if the applicant were here, and the applicant helps take the youngest child to school. *Applicant's Stepdaughter's Statement*, at 1, undated.

The AAO notes, however, that separation commonly creates emotional stress and financial and logistical problems. It finds the record to demonstrate that the applicant's spouse will face the unfortunate, but expected disruptions, inconveniences and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. Separation nearly always results in considerable hardship to individuals and families. However, 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, exists. 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(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The record does not include substantiating documentary evidence of the requisite type of emotional or financial hardship. 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 will experience difficulty without the applicant, however, the AAO finds that sufficient evidence of extreme hardship, in the event that the applicant's spouse remains in the United States, has not provided.

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 a review of 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(i) 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.