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

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U.S. Citizenship
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FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: AUG 05 2009

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:



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. Grisson
Acting 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 entered the United States without inspection on about June 14, 2003 and remained until April 25, 2005, when she departed the United States under an order of voluntary departure. She was found to be inadmissible to the United States under 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 a period of one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Fiancé(e). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her husband.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated April 12, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in determining that the applicant had not established extreme hardship to her husband if she is denied admission to the United States. *See Brief in Support of Notice of Appeal* at 1. Specifically, counsel states that USCIS failed to give proper weight to the evidence presented and failed to consider the cumulative effect of the various hardships presented. *Id.* Counsel contends that the applicant’s husband is gainfully employed as an aviation mechanic and would lose his job and benefits if he were to relocate to Nicaragua. *Brief* at 3. Counsel further asserts that the applicant’s husband would have difficulty finding employment in Nicaragua and would suffer hardship due to harsh conditions there, which have been recognized by the U.S. government in extending Temporary Protected Status to certain Nicaraguan nationals. *Brief* at 3. Counsel additionally contends that the applicant’s husband would suffer “emotional and mental anguish” due to separation from the applicant and is already suffering from depression as a result of the separation. *Brief* at 2. In support of the waiver application and appeal, the applicant submitted affidavits from the applicant and her husband and an income tax return and other documentation of the applicant’s husband’s employment and income. The entire record was reviewed and considered in arriving at 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years

of the date of such alien's departure or removal, . . . 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 [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.

Section 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a forty-eight year-old native and citizen of Nicaragua who resided in the United States from June 2003, when she entered without inspection, until April 2005, when she returned to Nicaragua. The applicant's husband is a forty-seven year-old native of Nicaragua and citizen of the United States whom she married on November 12, 2003. The applicant currently resides in Nicaragua and her husband resides in Miami, Florida.

Counsel asserts that the applicant's husband would be unable to find employment in Nicaragua and would suffer hardship there due to harsh economic conditions. No documentation was submitted to support this assertion, but as noted by counsel, Temporary Protected Status (TPS) for certain Nicaraguan nationals has been extended through July 5, 2010 because there continues to be a substantial, but temporary, disruption of living conditions there resulting from Hurricane Mitch and Nicaragua remains unable, temporarily, to adequately handle the return of its nationals. *Extension of the Designation of Nicaragua for Temporary Protected Status*, 73 Fed. Reg. 57138 (October 1, 2008). The Extension of the Designation of Nicaragua for Temporary Protected Status by the Department of Homeland Security states,

It is estimated that Hurricane Mitch destroyed or disabled 70 percent of the roads in Nicaragua, severely damaging 71 bridges and over 1,700 miles of highway. . . . Temporary structures were never replaced and have deteriorated, and roads and other infrastructure that were damaged by the hurricane have been poorly rebuilt or not rebuilt at all. . . . Furthermore, two of the five projects funded by the Inter-American Development Bank for post-Mitch reconstruction still awaited completion as of May 2008, including one project implementing sanitation measures at Lake Managua.

Additionally, since Hurricane Mitch, Nicaragua has been beset by other economic crises and natural disasters. Hurricane Felix devastated the Northern Atlantic Autonomous Region and affected neighboring departments of Nueva Segovia and Jinotega in September 2007. Hurricane Felix destroyed more than 20,450 homes along with 100 schools, clinics, community centers, and churches, killed more than 130 people, and caused an economic loss of approximately \$500 million. Tropical Depression Alma of late May 2008 exacerbated the damage caused by Hurricanes Felix and Mitch. *Extension of the Designation of Nicaragua for Temporary Protected Status*, 73 Fed. Reg. 57138, 57139.

In light of conditions in Nicaragua, it appears likely that the applicant's husband would have difficulty finding employment there and the economic hardship he would experience would amount to more than a reduction in his standard of living. The economic hardship combined with emotional hardship resulting from losing his home and employment in the United States and having to readjust to life in Nicaragua after several years in the United States would rise to the level of extreme hardship.

Counsel asserts that the applicant's husband is suffering emotional hardship due to being separated from the applicant. In support of this assertion an affidavit was submitted from the applicant's husband stating that his life has no significance without the applicant and he has now "fallen into a

depressive state.” No further evidence was submitted concerning the emotional or psychological state of the applicant’s husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). There is no evidence on the record to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with his spouse’s deportation or exclusion. Although the depth of his concern over his separation from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 exists.

The evidence on the record is insufficient to establish that any emotional hardship the applicant’s husband would experience if the applicant is denied admission to the United States would be other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely 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.