



U.S. Citizenship
and Immigration
Services

htz

[REDACTED]

FILE:

[REDACTED]

Office: TEGUCIGALPA

Date: DEC 03 2009

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.

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).

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 1, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from residing in the United States. *Statement from Counsel*, dated July 17, 2007.

The record contains a statement from counsel; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's husband's passport; a copy of the applicant's marriage certificate; a statement from the applicant's husband; a psychological evaluation of the applicant's husband; copies of tax and employment documents; copies of documents regarding the applicant's automobile insurance; a copy of the applicant's passport; a copy of the applicant's birth certificate; a copy of the applicant's son's passport; a copy of the applicant's son's birth certificate; immunization and school records for the applicant's son; copies of photographs of the applicant and her family; copies of correspondence between the applicant and her husband; documentation associated with the applicant's proceedings in Immigration Court, and; information regarding the applicant's entry to the United States without inspection and subsequent unlawful presence. 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 April 12, 2001. She was apprehended and placed into removal proceedings before an Immigration Judge. On November 17, 2004, an Immigration Judge granted her voluntary departure until January 17, 2005. The applicant appealed the decision to the Board of Immigration Appeals (BIA), and on January 24, 2006, the BIA granted the applicant permission to remain in the United States until March 24, 2006. She returned to Honduras in March 2006. Based on the foregoing, the applicant accrued over one year of unlawful presence in the United States, in part including the period from her entry without inspection on April 12, 2001 until an Immigration Judge granted her voluntary departure on November 17, 2004. 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. The applicant does not contest her inadmissibility on appeal.

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, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from residing in the United States. *Statement from Counsel* at 2.

Counsel contends that the applicant and her husband are deeply in love and they depend on each other for emotional and financial stability. *Id.* Counsel notes that the applicant and her husband have an eight-year-old son who is residing with the applicant in Honduras. *Id.* Counsel states that the applicant and her husband have concern that their son will suffer negative consequences due to being separated from the applicant's husband for a lengthy period. *Id.*

Counsel provides that the applicant is a homemaker and she does not work, thus she is not able to support herself without her husband's assistance. *Id.* Counsel contends that the applicant's husband must support his own household as well as the applicant's in Honduras, and that his income is insufficient to do so. *Id.* Counsel asserts that the applicant's husband is not aware of any employment opportunities in Honduras, thus he would be unable to provide for his family there. *Id.*

Counsel contends that the applicant's husband will endure substantial emotional hardship if the applicant is not permitted to return to the United States, as he is close with the applicant and depends on her to keep their household together. *Id.* Counsel provides that the applicant's husband has been diagnosed with adjustment disorder, depression, and anxiety due to being separated from the applicant and their son, and due to his present financial strain. *Id.* Counsel indicates that the applicant's husband endures further emotional hardship due to his concern for the applicant's and their son's security in Honduras. *Id.*

The applicant's husband provides that he has been married to the applicant for almost nine years. *Statement from the Applicant's Husband*, dated July 7, 2007. He expresses that if the present waiver application is not granted he will experience extreme difficulty for "financial, emotional, and family reasons." *Id.* at 1. The applicant's husband indicates that he earns approximately \$500 per week, and that it is a substantial burden for him to maintain two households. *Id.* He notes that he would be unable to find sufficient employment in Honduras to support the applicant and their son. *Id.* He explains that he would lose everything he has built up in the United States should he join the applicant in Honduras. *Id.*

The applicant's husband expresses that he will suffer substantial emotional hardship if the applicant resides in Honduras. *Id.* He states that he is anxious and depressed due to separation from the applicant and their son. *Id.* at 2. He provides that he cannot bring his son to the United States without the applicant because he must work while the applicant provides childcare. *Id.* He indicates that he fears his son will have a lower quality education and exposure to youth gangs in Honduras. *Id.*

The applicant provided a psychological evaluation for her husband from [REDACTED] a clinical psychologist. [REDACTED] noted that the applicant's husband reported anxiety, decreased concentration and attention, issues with his career, difficulty with decision making, depression, marital separation, a sense of failure, emptiness, loneliness, decreased motivation, decreased energy, fears, financial problems, headaches, mood swings, physical tension, stress, and isolation. *Report from* [REDACTED] dated July 3, 2007. He concluded that the applicant's husband's symptoms are consistent with Adjustment Disorder with Depression and Anxiety. *Id.* at 1.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant has not shown that her husband will experience extreme hardship should he remain in the United States. The applicant's husband expressed that he will endure emotional hardship if he remains separated from the applicant and their son. However, the applicant has not distinguished her husband's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility. U.S. court 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 AAO has reviewed the report from [REDACTED]. It is noted that the report was generated for the purpose of this proceeding and it does not represent an ongoing relationship with a mental health professional or treatment for a mental health disorder. [REDACTED] listed symptoms as reported by the applicant's husband, and he stated that he compared the symptoms to three checklists to determine that the applicant's husband is in the moderate range for depression and he exhibits symptoms of Adjustment Disorder with Depression and Anxiety. [REDACTED] noted that the applicant's symptoms "appear consistent with an individual who had been separated from his loved ones." *Report from [REDACTED]* at 1. The report does not sufficiently identify elements of emotional hardship that show that the applicant's husband will endure more psychological hardship than commonly expected when spouses reside apart due to inadmissibility.

The applicant's husband stated that he will suffer economic hardship due to the applicant's absence, as he must support the applicant and their son in Honduras as well as meet his own needs in the United States. Yet, the applicant has not indicated whether she has job skills that she can use to seek employment, or an estimate of her expenses in Honduras. The applicant's husband indicates that the applicant is a homemaker, yet the applicant has not stated whether she has attempted to find employment outside the home to help meet her and her son's needs. The record does not reflect whether the applicant would have childcare expenses should she work in Honduras, or whether she would be able to work while her son attends school. Nor has the applicant provided a complete account of her husband's estimated expenses in the United States. Thus, the applicant has not provided sufficient explanation or evidence to show that her husband would face unusual expenses or financial hardship should he remain in the United States without her and their child.

The record contains references to hardships that may be 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 recognizes that the applicant's son may face challenges should he continue to reside in Honduras and remain separated from his father. However, while the applicant's husband expressed concern for his son's exposure to gangs, the applicant has not presented evidence to show that gang activity occurs where she and her son reside. Nor has she submitted sufficient explanation of her son's routine such to show whether he is unattended during periods or in locations that might expose him to unwanted influences. The applicant's husband expressed concern for his son's educational opportunities, yet the applicant has not described her son's school activities in Honduras such to show that he is lacking appropriate education. Accordingly, the applicant has not shown by a preponderance of the evidence that her son will face unusual circumstances that raise her husband's emotional hardship to extreme hardship. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant also has not shown that her husband will suffer extreme hardship should he relocate to Honduras to maintain family unity. The applicant's husband expressed that he is experiencing emotional hardship due to separation from the applicant and his son. However, should he join them in Honduras he would not suffer family separation. The applicant's husband indicated that he is unaware of employment opportunities in Honduras, suggesting that he would endure economic hardship should he relocate there. However, the applicant has not provided documentation to support that she and her husband would be unable to work in Honduras to meet their needs. As noted above, the applicant has not stated her expenses in Honduras, and she has not provided an estimate of the income she and her husband would be likely to earn. Thus, the applicant has not shown that her husband will suffer serious financial hardship should he relocate to Honduras.

The AAO acknowledges that the applicant's husband immigrated from Honduras, and he wishes to continue to reside in the United States with his family. It is understood that the applicant's husband would endure emotional hardship due to unwillingly returning to Honduras to join his family. Yet, as a native of Honduras and Spanish speaker, it is evident that the applicant's husband would not be faced with adapting to an unfamiliar language or culture. The applicant has not presented sufficient explanation or documentation to show that her husband would suffer extreme hardship should he join her and his son in Honduras.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he join her in Honduras or remain in the United States. Thus, the applicant has not established 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.

The applicant bears the burden of proof in these proceedings. *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.