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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: TEGUCIGALPA, HONDURAS

Date: OCT 06 2009

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:

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 under section 212(a)(9)(B)(i)(II) of 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.¹ The applicant is married to a United States citizen and has two United States citizen stepchildren. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated December 11, 2006.

The record includes, but is not limited to, criminal records for the applicant; and statements from the applicant's spouse. The record also includes statements in the Spanish language unaccompanied by a certified translation. The AAO will not review these documents. *See* 8 C.F.R. § 103.2(b)(3). The entire record was reviewed and considered in rendering 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-

....

(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

¹ The AAO notes that on May 8, 2000 the applicant was convicted of Failure to Identify in Texas. *Certificate of Disposition, District Court of Harris County Texas*, dated November 14, 2006. The AAO will not analyze whether the applicant's crime constitutes a crime involving moral turpitude and renders him inadmissible under section 212(a)(2)(A) of the Act. The AAO notes that the extreme hardship analysis to the applicant's spouse under section 212(h) of the Act would be the same as that conducted under section 212(a)(9)(B)(v). Even if the applicant's children were found to have suffered extreme hardship under section 212(h), the applicant would still need to demonstrate extreme hardship to his spouse under section 212(a)(9)(B)(v) of the Act. As such, an extreme hardship analysis under section 212(h) is unnecessary.

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.

In the present case, the record indicates that the applicant entered the United States without inspection in 1994 and departed in November 2005, returning to Honduras. *Consular Notes, Embassy of the United States, Tegucigalpa, Honduras*, dated January 25, 2006. On June 27, 2000, the applicant obtained Temporary Protected Status. *Form I-821, Application for Temporary Protected Status*. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he obtained Temporary Protected Status on June 27, 2000. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his stepchildren would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Honduras or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Honduras, the applicant needs to establish that his spouse will suffer extreme hardship. The record does not address how the applicant's spouse would be affected if she resides in Honduras. The record fails to indicate whether the applicant's spouse has familial and cultural ties in Honduras. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Honduras. The record does not address employment opportunities for the applicant's spouse in Honduras, nor does the record document, through published country conditions reports, the economic situation in Honduras and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Honduras and if so, whether she would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Honduras.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse notes that the applicant has been a great help in taking care of her children and herself. *Statement from the applicant's spouse*, dated December 6, 2005. She states that the applicant's stepchildren depend upon him emotionally and economically. *Id.* While the AAO acknowledges these statements, it notes the applicant's stepchildren are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children might encounter would affect the applicant's spouse, the only qualifying relative in this case. The applicant's spouse claims that she is late with the house payments, having difficulty keeping up with the bills, and finds it hard to send money to the applicant in Honduras. *Statement from the applicant's spouse*, dated June 13, 2006. While the AAO acknowledges these statements, it notes that the record fails to document such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of 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 applicant's spouse notes that she feels her life is becoming more complicated without the applicant, as she needs his help. *Id.*

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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(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.