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FILE:



Office: LIMA, PERU

Date:

SEP 25 2009

IN RE:



APPLICATION: Application for Waiver of Ground 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 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, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 37-year-old native and citizen of Chile 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. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife in the United States.

The Officer in Charge found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *See Decision of the Officer in Charge.* On appeal, the applicant's spouse contends that the denial of the waiver imposes physical, emotional, and financial hardships. *See Form I-290B, Notice of Appeal.*

The record contains, *inter alia*, a copy of the couple's marriage certificate; letters from the applicant's wife, [REDACTED] a statement from the applicant; letters from [REDACTED] family; and medical records for [REDACTED]. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9)(B) of the Act provides:

(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 [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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in

January, 2002. *See Notice to Appear*. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on April 7, 2006, which was approved on the same day. *See Form I-130*. On September 20, 2005, an immigration judge granted the applicant voluntary departure on or before January 18, 2006, in lieu of removal. *See Order of the Immigration Judge*. The applicant departed from the United States on January 15, 2006. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is 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 (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted).

However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute 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 unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 38-year-old native and citizen of the United States. *See Birth Certificate for [REDACTED]* The applicant and his wife have known each other since 2002. *See Marriage License*, issued in Texas on Jan. 31, 2002. The couple has been legally married since 2006. *See Marriage Certificate*, issued in Chile on Apr. 3, 2006. The applicant’s spouse asserts that she is suffering physical, emotional and financial hardships as a result of the separation from the applicant. *See Letters from [REDACTED]*

In support of the hardship claims, the applicant’s wife states that she suffers from frequent and severe chest pains, especially when she is under physical or emotional stress. *See id.* She worries that when she experiences these pains at night, the applicant is not available to assist her. *Id.* In 2007, [REDACTED] consulted with an internist in Mexico, and underwent a battery of tests. *See Medical Records.* According to [REDACTED] her internist told her that her “EKG was within normal limits but did not guarantee the possibility of not having a heart attack.” *See Letters from [REDACTED]* The echo cardiogram test indicated that her “heart valves are within normal limits except for a minimal hypokinesia on the left ventricle,” and the E-Speed Test found “no evidence of significant coronary artery disease,” but there was “evidence of muscular bridging involving the mid LAD.” *Id.*; *see also Medical Records.* [REDACTED] reports that her cardiologist told her to “relax since there is no evidence of coronary ischemia.” *See Letters from [REDACTED]* In addition to this medical concern, the applicant’s wife states that the separation has caused depression, sadness, and the inability to concentrate at work. *Id.*; *see also Letters from the applicant and [REDACTED] sister and parents.* Finally, the applicant’s wife claims that she needs the applicant’s financial support, *see Letters from [REDACTED]*, and the applicant notes that they have outstanding debts, *see Applicant’s Statement.*

Although the record suggests that the separation of the family causes various hardships to the applicant’s spouse, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. For instance, there is no evidence in the record, such as an ongoing relationship with a mental health professional, or any history of treatment for anxiety or any other significant psychological conditions, to show that the applicant’s spouse’s emotional hardship is unusual or beyond that which would normally be expected upon removal. *See*

Perez, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Regarding [REDACTED] medical concerns, the medical evidence does not reflect a guarded prognosis, or a need for continuing care. Accordingly, the applicant's medical condition does not appear to be of such severity that the denial of the waiver would cause extreme hardship. Finally, the record lacks documentary evidence to support a claim of financial hardship, and it appears that [REDACTED] is the primary wage earner. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof).

Regarding potential relocation, the applicant contends that his wife would not be able to pursue her career in nursing because the system is different in Chile, and his salary would not be enough to support the family. *See Applicant's Statement*. The applicant also states that his wife would miss her mother and the rest of her family in the United States, and that she "gets depress[ed] if she is not close to her family." *Id.* Finally, the applicant's wife is fearful of the earthquakes in Chile. *Id.*

Given the applicant's wife's family and career in the United States, it appears that relocation to Chile could impose adjustment difficulties and the hardship of separation from her family. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez*, 96 F.3d at 392. Additionally, there is no documentary evidence in the record regarding country conditions in Chile to support the applicant's claim that his wife would not be able to obtain employment. *See Matter of Soffici, supra*.

In sum, although the applicant's spouse has presented some evidence of harm based on family separation and relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family 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 removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an 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. *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.