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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



**U.S. Citizenship  
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FILE:



Office: TEGUCIGALPA, HONDURAS

Date:

**FEB 04 2010**

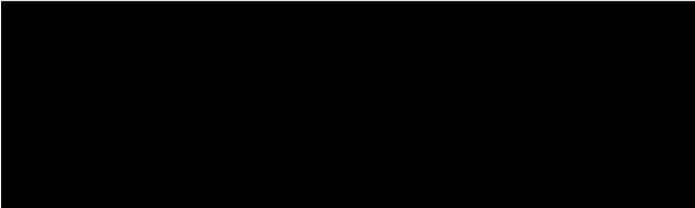
IN RE:



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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), 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 in the United States for more than one year and seeking readmission within ten years of her 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.

In a decision, dated May 9, 2007, the OIC found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO, dated June 8, 2007, counsel states that the applicant has a U.S. citizen husband and son. He states that the applicant's son will be psychologically affected for the rest of her life and that the applicant is honest with no criminal record.

The record indicates that the applicant entered the United States without inspection on May 5, 2000. The applicant remained in the United States until December 31, 2006. Therefore, the applicant accrued unlawful presence from when she entered the United States in May 2000 until December 31, 2006, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her December 31, 2006 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 and/or parent of the applicant. Hardship the applicant or her child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined 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 set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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.

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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Honduras and in the event that he resides in the United States, as he is not required to reside outside of 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.

The record of hardship in the applicant's case includes a statement from the applicant's spouse. In his statement, dated January 4, 2007, the applicant's spouse states that he and his five month old son

will suffer emotionally and economically in the absence of the applicant. He states that his son, as a newborn, needs his mother's care and attention. He states that he feels his son will be psychologically affected for the rest of his life as a result of being separated from the applicant. The applicant's spouse also states that the applicant is a great support to him in his life, that she will work when she returns to the United States to help with the family debts, and that currently he cannot afford to maintain two homes in two countries. The AAO notes that hardship to the applicant's child is not considered in 212(a)(9)(B)(v) waiver proceedings unless it is shown that hardship to the child is causing hardship to the applicant's spouse. The AAO also notes that the applicant has not submitted documentation to support her spouse's claims. 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)). The applicant's spouse's assertions are evidence and have been considered. But absent corroboration, they cannot be given great weight. Thus, the AAO cannot find that the applicant's spouse will suffer extreme hardship as a result of being separated from the applicant.

However, the AAO does find that the applicant's spouse will suffer extreme hardship as a result of relocating to Honduras. The AAO notes that U.S. Citizenship and Immigration Services currently offers Temporary Protected Status to nationals of Honduras residing in the United States. A Temporary Protected Status designation acknowledges that it is unsafe to return to a country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. Temporary Protected Status for Hondurans has been designated through July 5, 2010. Thus, the AAO finds that due to the current situation in Honduras it would be an extreme hardship for the applicant's spouse to relocate to Honduras.

Although the AAO finds that it would be an extreme hardship for the applicant's spouse to relocate to Honduras, the applicant's waiver application cannot be granted because the applicant has not shown that her spouse would suffer extreme hardship as a result of separation. As noted above, extreme hardship to the applicant's spouse must be established in the event that he resides in Honduras and in the event that he resides in the United States.

The AAO acknowledges that separation from the applicant causes the applicant's spouse hardship, but the applicant has submitted insufficient evidence to demonstrate that this hardship goes beyond the hardship typically associated with removal or inadmissibility.

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.

A review of the documentation in 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(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.