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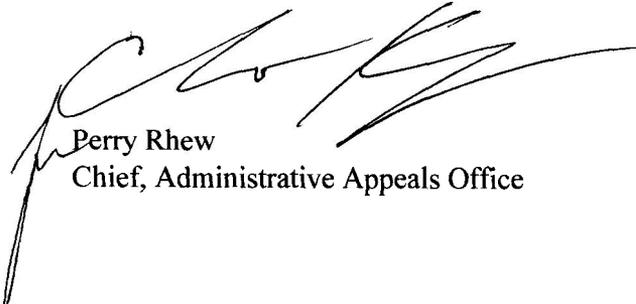
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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 or reopen, 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 Field Office Director, Guatemala City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, in part, and the appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to 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. The applicant is married to a naturalized U.S. citizen and 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 reside with his wife and children in the United States.

The field office director found that the applicant was also inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), because he was ordered deported in 1995, was physically removed to Guatemala in 2003 and subsequently returned to the United States. The director concluded that the applicant was therefore ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and denied the application accordingly. *Decision of the Field Office Director*, dated September 17, 2007.

On appeal, counsel contends that the field office director erred in finding the applicant ineligible for a waiver. Specifically, counsel contends the applicant was never removed in 2003, but was present in the United States until he departed for his consular interview in 2007. Therefore, according to counsel, the applicant never reentered or attempted to reenter the United States after removal and is eligible for a waiver. *Brief in Support of I-290B*, dated October 8, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on October 3, 1996; a declaration from [REDACTED] a declaration from the applicant; letters from the applicant's church; letters from the applicant's employer; financial and tax documents; a copy of [REDACTED] naturalization certificate; copies of the birth certificates of the couple's two U.S. citizen children; copies of the children's report cards and other school documents; numerous photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

In this case, the record shows, and the applicant admits, that he entered the United States without inspection in 1993. On April 4, 1995, the applicant was ordered removed *in absentia* by an immigration judge, and on August 30, 1995, a Warrant of Deportation was issued. However, there is no evidence in the record that this warrant was ever executed and no documentation of the applicant's departure from the United States to Guatemala in 2003, as stated by the director. Rather, the applicant has submitted voluminous evidence showing he remained in the United States until he departed for his consular interview in 2007. The record does not indicate that the applicant has returned to the United States since his departure in 2007. Therefore, the field office director erred in finding the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act and this portion of the director's decision is hereby withdrawn.

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.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in March 2007.

Therefore, the applicant accrued unlawful presence of almost ten years. He now seeks admission within ten years of his 2007 departure. Accordingly, he is 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. 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.

In this case, the applicant's wife, [REDACTED], states that she has lived in the United States since 1983. She states that when she met the applicant in 1995, she had a daughter, [REDACTED] who was one year old. She contends that her daughter calls the applicant "dad" and that [REDACTED] has no contact with her biological father. The applicant and his wife had another daughter in 1997. [REDACTED] states that her husband is the sole bread-winner for their family and that if his waiver application were denied, she would have to find work to support her children who have never been cared for by anyone other than their mother. In addition, [REDACTED] claims she cannot take her daughters to live in Guatemala with the applicant because "their academic possibilities would be affected deeply." She further claims she would be in constant fear for their safety due to the high crime rate and also would fear for their daughters' health since they have never lived outside of the United States. [REDACTED] states that her entire family lives in the United States, including her mother, three brothers, three sisters, and their families. She contends they are a very close family and that it would cause severe emotional distress to tear her and her children away from her family. According to [REDACTED] she has never lived in Guatemala and has not lived outside of the United States for the last twenty-four years. Furthermore, [REDACTED] contends that she and her husband are extremely involved in their church and that the family goes to church five days a week. She states that she and her husband go to marriage counseling classes every two weeks "to make sure that [their] marriage stays solid and strong." She contends the applicant is her soul-mate, her confidant, and that they are extremely close. *Declaration of* [REDACTED], dated March 16, 2007.

A declaration from the applicant states that if his waiver application were denied, he would suffer extreme hardship because he would be separated from his family. According to the applicant, although

he takes responsibility for his actions, he was misled and defrauded by people who told him they would help him “get [his] papers in order.” The applicant states that he “did receive the notice to go to court,” but that the people who were helping him told him not to worry about it, so he ignored the notice. The applicant states that it would be extremely difficult for his wife to visit him in Guatemala if his application were denied and that he does not want to expose his wife and daughters to the crime that occurs there. He further contends that since he is the only person who works in the family, it would be impossible to raise enough money to pay for three airline tickets to Guatemala. The applicant claims that he came to the United States when he was twenty-one years old, has lived in the United States for the past thirteen years, and that “Guatemala is a country [he] no longer remember[s].” *Declaration of* [REDACTED], undated.

After a careful review of the evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband’s waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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 (9<sup>th</sup> 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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).

With respect to the applicant’s financial hardship claim, although the record shows that [REDACTED] has not worked since 1996, there is no allegation she has any physical or mental health condition that would preclude her from seeking employment. The record shows that [REDACTED] is thirty-six years old, completed all of her education from third grade through high school in the United States, and has daughters who are currently thirteen and fifteen years old. The record also indicates that [REDACTED] mother and at least three of her siblings live in the Los Angeles area, close to where she lives. Furthermore, although there are numerous tax and financial documents in the record, aside from a rental agreement from 1997, there is no documentation addressing [REDACTED] regular, monthly expenses such as rent or mortgage.<sup>1</sup> In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme

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<sup>1</sup> The record does include, inexplicably, a quitclaim deed showing that [REDACTED] conveyed real property to the applicant on October 5, 1999, “establish[ing ownership for the applicant] sole and separate of a spouse.” *Quitclaim Deed from* [REDACTED] *to* [REDACTED] dated October 5, 1999.

hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In addition, the record does not show [REDACTED] will suffer extreme hardship if she were to move to Guatemala to avoid the hardship of separation. Regarding her contention that she fears for her daughters' health in Guatemala because they have never lived outside of the United States and are used to an American diet, there is no evidence either of the couple's daughters have any health problems that would be exacerbated by moving to Guatemala. [REDACTED] claim that she would fear for their safety in Guatemala is similarly unsubstantiated by any evidence in the record. Furthermore, although [REDACTED] prefers that her daughters continue their education in the United States, there is no evidence that their transition to living in Guatemala would be any more difficult than would normally be expected. The record indicates that the applicant's mother, the girls' grandmother, continues to live in Guatemala. *Biographic Information (Form G-325A)*, dated February 21, 2007. The record also indicates the family speaks Spanish. In sum, there is no evidence that the applicant's situation facing relocation to Guatemala is unique or atypical compared to other individuals affected by deportation or inadmissibility. *See Perez, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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)(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. The portion of the September 17, 2007 decision of the Guatemala Field Office finding the applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act is withdrawn.