

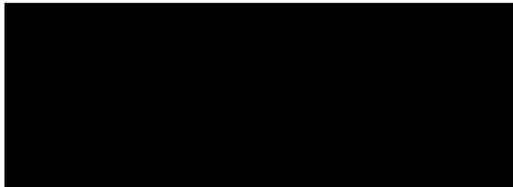
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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
and Immigration
Services

PUBLIC COPY



hr

FILE:



Office: TEGUCIGALPA

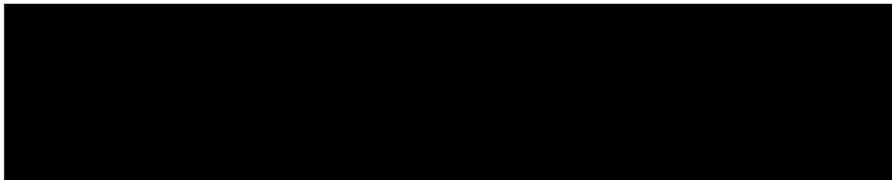
Date: **JAN 08 2010**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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).

Michael Hummer

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Tegucigalpa, Honduras, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Honduras and the husband of a U.S. citizen. He is also the beneficiary of an approved Form I-130 petition.

The OIC found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife. The OIC also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, counsel submitted a brief and additional evidence. The record reflects that the applicant entered the United States without inspection during May of 1999 and that he remained in the United States through October 21, 2006, when he departed for Honduras. The record contains no evidence that the applicant ever achieved any lawful status in the United States. On appeal, counsel did not contest that the applicant was unlawfully present in the United States for a period greater than one year and has since departed.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

The applicant is inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

To demonstrate that the applicant's absence would cause extreme hardship to his wife, the applicant must show that, if he remains absent from the United States and his wife remains in the United States, she will suffer extreme hardship. The applicant must also demonstrate that if he remains absent and his wife joins him to live in Honduras, that will cause her extreme hardship. The AAO will first consider the scenario of the applicant being removed and his wife joining him.

Neither the applicant nor counsel has addressed whether the applicant's wife might be able to move to Honduras to be with the applicant without encountering extreme hardship. The applicant's wife

addressed the possibility only to dismiss it, stating that she has to remain in the United States to pay her rent and bills, and so that she can send money to the applicant. The AAO observes that the applicant's rent expense in the United States would likely be obviated by her moving to Honduras, as would at least some of her other bills. Further, although the applicant's wife's inability to send the applicant money might cause the applicant hardship, it has not been demonstrated that it would cause hardship to his wife. Further still, although the applicant's wife has stated that the applicant told her that he could only earn approximately \$5 per day working in Honduras, no evidence was provided to corroborate that estimate, no evidence was provided pertinent to the amount of money the applicant would require in order to live in Honduras, either with or without his wife, without his wife suffering extreme hardship, and no evidence was provided pertinent to what additional amount the applicant's wife might reasonably be expected to earn if she went to Honduras in order to live with him there.

Without additional evidence and analysis, the AAO cannot find that the applicant's wife would encounter extreme financial hardship if she joined her husband in Honduras.

The AAO notes, however that Honduras is a country designated for Temporary Protected Status (TPS). A TPS designation acknowledges that presence in a particular country is unsafe because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions.

Honduras was designated for TPS on January 5, 1999, based on devastation resulting from Hurricane Mitch. The TPS designation for Honduras has been extended through July 5, 2010, based on continuing substantial disruption resulting from Hurricane Mitch, and the resulting inability of Honduras to adequately handle the return of its nationals. Thus, based on the TPS designation of Honduras, the AAO finds that to relocate to Honduras would cause extreme hardship to the applicant's spouse.

The remaining scenario to consider is that of the applicant remaining in Honduras and his wife remaining in the United States. In order to qualify for waiver, the applicant must also demonstrate that his wife would suffer extreme hardship pursuant to that scenario.

The record contains an undated letter from one of the applicant's sister-in-laws. That letter is essentially a character reference and does not directly address hardship that the applicant's absence is causing or will cause to his wife. It is of no direct relevance to any material issue in this matter and will not be further addressed.

An undated letter from the applicant's mother-in-law states, "The applicant has been very helpful in my daughter's life, helping her through rough times and illnesses." That letter does not otherwise address hardship that failure to approve the waiver petition would cause to the applicant's wife. In a letter dated October 5, 2006, another sister-in-law of the applicant stated, [The applicant's wife] is having medical problems and needs [the applicant] by her side. It did not detail the applicant's wife's medical problems or why they required the applicant's presence.

In a letter dated October 18, 2006, [REDACTED], a licensed professional counselor, stated that the applicant's wife came to her office with symptoms of depression, and reported that the cause of her depression was the applicant's absence and inability to return. She further stated that the applicant's wife has a history of suicidal ideation and attempts, but provided no further details. She stated, "[The applicant's wife] perceives herself to be dependent on the applicant for emotional support and her fear for his physical safety will exacerbate the symptoms." Finally, she stated that the applicant's wife had scheduled a future session with [REDACTED]. The record contains no other evidence that [REDACTED] and the applicant's wife ever met at any other time, either before or since.

In a letter notarized on October 12, 2006, the applicant's wife stated that the applicant's absence has caused her to "become very nervous and has caused [her] extreme emotional problems," but did not elaborate. She added that she has been thinking of going to Honduras to live with the applicant, but needs to work to pay her rent and bills, and needs to send the applicant money while he is in Honduras.

Printouts dated April 16, 2007 and April 19, 2007 from the Seton Northwest Hospital in Austin, Texas show that the applicant's wife was treated on those days for acute gastritis and an acute urinary tract infection. That printout states that medications, alcohol, caffeine, nicotine, spicy or acid foods, and emotional distress can all trigger gastritis. It instructs the applicant's wife to continue using Prilosec, to use over the counter Maalox, to eat a bland diet without caffeine, to take Cipro as directed, to return to the emergency room as necessary, and to follow up with the doctor in two or three days.

In a letter, dated June 1, 2007, on the letterhead of the Austin Regional Clinic in Austin, Texas, [REDACTED], stated that the applicant's wife has a history of peptic ulcer and abdominal pain diagnosed as gastritis/reflux, and eats poorly as a result, which has caused her to lose weight and develop blood chemistry abnormalities. That letter further stated,

[The applicant's wife] has severe anxiety and insomnia due to her husband's recent deportation¹ back to Honduras, and this is contributing to her stomach problems. She is being treated with medications for all the above, but would be tremendously helped if her husband were allowed to return to their home here.

In the appeal brief, counsel stated that the applicant's wife ". . . has suffered from immense emotional distress that has manifested itself in the form of severe depression and anxiety. He further stated, "[The applicant's wife has] digressed [sic] into a state of extreme depression that has affected her ability to function normally and healthily." Finally, counsel stated,

No reasonable person can say that the [applicant's] wife, who is suffers [sic] from depression and anxiety so severe that [they require] counseling and therapy from

¹ A number of documents in the record refer to the applicant's "deportation." The AAO notes that the applicant was not deported, but left the United States voluntarily and was then found to be inadmissible to reenter the United States.

medical professionals, and who cannot hope to address these and other health issues save for the readmission of the [applicant], is simply going through the normal problems of separation.

The AAO notes that none of the corroborating evidence submitted states that the applicant's wife suffers from severe depression. Further, none states that her emotional issues can only be addressed by admitting the applicant to the United States.

Counsel further stated,

In an evaluation by one of the [applicant's wife's physicians] . . . it was noted that the separation from [the applicant] had brought on emotional dysfunction so severe that [the applicant's wife] feared becoming suicidal.

The record contains no such letter from a physician. Counsel apparently intended to refer to the October 18, 2006 letter of [REDACTED], a licensed professional counselor. [REDACTED] did not characterize the applicant's wife's condition as severe. [REDACTED] stated that the applicant has a history, apparently self-reported, of being in abusive relationships and of suicidal ideation and attempts. The letter also states,

[The applicant's wife] has expressed concern that her husband's deportation will challenge her coping skills and that she will revert back to harmful maladaptive coping mechanisms.

In referring to "maladaptive coping mechanisms," whether [REDACTED] meant to refer to suicide attempts, or suicidal ideation, or abusive relationships, or some other maladaptive coping behavior, is unclear. Further, [REDACTED] did not state that she shared the applicant's wife's concern.

Further, [REDACTED] stated that the applicant's wife attended one session and scheduled another. The record does not demonstrate that the applicant's wife has received receiving regular psychological or psychiatric care. Rather, the evidence suggests that she may have consulted with a counselor only once as necessary to obtain a letter for use as evidence in the instant case.

That report contains no evidence that [REDACTED] conducted therapy with the applicant's wife either before or after their meeting. Contrary to counsel's assertion, the evidence does not show that the applicant's wife has ever sought treatment from anyone for stress, anxiety, or depression. Moreover, the record does not show that [REDACTED] recommended that the applicant's wife undergo psychiatric treatment or psychological therapy to relieve her symptoms.

The record does not establish that the applicant's wife is experiencing or will experience emotional hardship greater than what is normal in similar situations. Further, the record indicates that the claimed mental dysfunction appears to have existed prior to the applicant's spouse's association with the applicant. Further still, the evidence is insufficient to show that the return of the applicant would greatly assuage his wife's symptoms.

Yet further, although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] report is based on a single interview with the applicant's wife. The record fails to reflect an ongoing relationship with the applicant's wife. Any conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The record does not demonstrate that the psychological and emotional hardship that the applicant's absence is causing or would cause to the applicant's wife if the waiver application were not approved, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

In referring to "depression and anxiety so severe that [they require] counseling and therapy from medical professionals," counsel may have intended to imply that the applicant's wife's gastrointestinal problems were caused by the applicant's absence, rather than to refer to psychological or psychiatric therapy. Evidence provided shows that medications, alcohol, caffeine, nicotine, spicy or acidic foods can cause gastritis, rather than only stress and anxiety. No evidence in the record, supports the implication that, in this case, the applicant's wife's gastrointestinal problems were caused by emotional distress, rather than by some other factor.

[REDACTED], at the Austin clinic, characterized the applicant's wife as having "a history of peptic ulcer," and "recurrent" abdominal pain, but did not indicate when that history began. Further, as was noted above, the record does not show that any of the health professionals consulted have indicated that readmission of the applicant is necessary to successful treatment of the applicant's wife's gastrointestinal problems, contrary to counsel's assertion. The evidence in the record does not demonstrate that, if the waiver application is not approved, and the applicant's wife remains in the United States, she will suffer medical hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The loss of any amount of income necessarily causes some degree of financial hardship. The record, however, contains no evidence, other than uncorroborated assertions, that the applicant ever earned any income in the United States. Further, the record contains no evidence pertinent to the applicant's wife's own income or her expenses. Under these circumstances, the AAO cannot find that if the waiver application is denied and the applicant wife remains in the United States, she will suffer financial hardship which, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.