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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
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: TEGUCIGALPA

Date:

JAN 21 2010

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds 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:

[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record reflects that the applicant, a native and citizen of Honduras, entered the United States without authorization in June 2000 and did not depart the United States until September 2006. The applicant was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 30, 2007.

On appeal counsel submits a brief, a psychological evaluation of the applicant's spouse, statements from the applicant's spouse and mother-in-law, and financial and medical documents. The entire record was considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, the applicant's mother-in-law and/or their friend, [REDACTED] cannot be considered, except as it may affect the applicant's spouse.

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. With respect to this criteria, the applicant's spouse contends that he will suffer emotional, physical and financial hardship. In a declaration he states that he is extremely anxious and physically ill due to his spouse's inadmissibility. He notes that in February 2007, soon after his spouse's departure from the United States, he lost 20 pounds and felt overwhelming pain in his stomach; he was diagnosed with an ulcer and anxiety/depression in May 2007 by his treating physician. In addition, the applicant's spouse asserts that due to his spouse's inadmissibility, he lost his job with TACA Airlines as he missed two days of work due to his desire to remain with his spouse in Honduras in October 2006. Moreover, due to the loss of his job, he has fallen into debt, his savings are gone and he is at the limits of his credit cards. He has had to rent out the house he bought with the applicant in order to cover the mortgage payments, and has moved in with his mother because he had no where else to go. *Declaration of [REDACTED] dated June 15, 2007.*

To support the applicant's spouse's assertions with respect to the emotional and physical hardship he is experiencing based on his spouse's inadmissibility, a letter has been provided by [REDACTED], who confirms that the applicant's spouse is under stress and is being treated for an ulcer and anxiety/depression. *Letter from [REDACTED]*, dated May 17, 2007. In addition, documentation has been provided to confirm that the applicant's spouse is suffering from major depression and severe anxiety disorder due to long-term separation from his spouse, and is in need of psychiatric treatment by a therapist, and further consultation with a mental health professional **with respect to medications to treat his psychiatric conditions.** *Psychological Evaluation by [REDACTED]* dated May 20, 2007. Finally, a letter has been provided by the applicant's spouse's mother, confirming that the applicant's spouse is residing with her; she notes that he is very nervous because he fears for his spouse's life in Honduras. She further references that the applicant's spouse is anxious, irritable, short-tempered, and is experiencing insomnia; she states that his anxiety is consuming him. *Declaration of [REDACTED]* dated June 15, 2007.

With respect to the financial hardship referenced by the applicant's spouse, evidence has been provided to substantiate the applicant's spouse's claim that he has had to rent his house, as he is unable to afford the mortgage payments. *Residential Lease or Month-to-Month Rental Agreement*, dated April 1, 2007. Financial documentation establishing that the applicant's spouse is in debt has also been provided by counsel.

The record reflects that cumulative effect of the emotional, physical and financial hardship the applicant's spouse is experiencing due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The record establishes that the applicant's spouse's mother was granted asylum due to a well-founded fear of persecution upon return to Honduras. She notes that were her son, the applicant's spouse, to relocate to Honduras, she would be in fear for his life. *Supra* at 2. She explains that prior to leaving Honduras in 1992, her son, [REDACTED] was threatened due to his job working for a military colonel; he was receiving threats in writing and on the phone. In September 1992, armed men burst into her house looking for [REDACTED]. When they realized her son was not in the house, they stated that they would come back for the rest of the family. Moreover, her brother was shot and killed and her father was assassinated. Based on these events, the applicant's spouse's mother obtained asylum in the United States in 1992, and four years later, her other sons joined her in the United States.

In addition to the above-referenced traumatic events, the record establishes the problematic country conditions in Honduras. As noted by the U.S. Department of State, in pertinent part:

A coup d'etat against the elected government took place on June 28, 2009 when the democratically elected leader, President Zelaya was ousted and exiled to Costa Rica. Neither the United States, the Organization of American States, the United Nations nor any other country has accepted the de facto authorities in Honduras as the legitimate government of that country.

Crime is endemic in Honduras and requires a high degree of caution by U.S. visitors and residents alike. U.S. citizens have been the victims of a wide range of crimes, including murder, kidnapping, rape, assault, and property crimes. Sixty-nine U.S. citizens have been murdered in Honduras since 1995; only twenty-three cases have been resolved. Nine U.S. citizens were murdered in Honduras in 2008, four in 2007 six in 2006, and ten in 2005. Kidnappings of U.S. citizens have also occurred in Honduras. Four U.S. citizens were kidnapped in January and February 2009, four in 2008, and two in 2007. Poverty, gangs, and low apprehension and conviction rates of criminals contribute to a critical crime rate, including acts of mass murder. The United Nations Development Program (UNDP) reported 4,473 murders in Honduras in 2008 giving Honduras, with a population of approximately 7.3 million people, one of the world's highest per capita murder rates.

Kidnappings for ransom have occurred in affluent areas where individuals may be targeted for their connections to the business community. Although U.S. citizens have not been specifically targeted because of their citizenship, they may be at increased risk for targeting than the average local citizen because of their presumed wealth. The four kidnappings of U.S. citizens in early 2009 took place while the victims were sitting in their cars outside their homes or schools. In some cases, investigators believe that the kidnappings were arranged by people who knew the victims.

The Honduran government conducts occasional joint police/military patrols in major cities in an effort to reduce crime. Problems with the judicial process include corruption and an acute shortage of trained personnel, equipment, staff, and financial resources. The Honduran law enforcement authorities' ability to prevent, respond to, and investigate criminal incidents and prosecute criminals remains limited, further strained by the necessity of policing the increased number of demonstrations since the June 28, 2009 coup.

Country Specific Information-Honduras, U.S. Department of State, dated October 2, 2009. Further, the U.S. Government continues to grant Hondurans living in the United States Temporary Protected Status (TPS), thus confirming the desperate conditions in Honduras.

Based on the problematic country conditions in Honduras as confirmed by the U.S. Department of State and the applicant's spouse's family's traumatic experiences while in Honduras and the emotional and psychological ramifications of said experiences, the AAO finds that the applicant's U.S. citizen spouse would experience extreme hardship were he to relocate to Honduras to reside with the applicant.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to remain in Honduras, regardless of whether he accompanied the

applicant or remained in the United States, community ties, support letters, property co-ownership, and the passage of more than nine years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry to the United States and unlawful presence and employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.