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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H3



FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: DEC 21 2006

IN RE: [REDACTED]

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. section 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

PRINTED COPY

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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, [REDACTED] is a native and citizen of Honduras. He 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 one year or more. He 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 return to the United States to join his U.S. citizen wife, [REDACTED] and stepchildren.

The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated August 5, 2004.

On appeal [REDACTED] states that she is suffering financially and emotionally due to her husband's absence; that she is also pained to see her 12-year-old daughter hurt by his absence; and that she and her daughter were forced to move in with her parents and share a room because they could not pay their bills. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated August 26, 2004 (*Attached Statements*). Also submitted on appeal are statements by (1) [REDACTED] son, indicating that he and his mother and sister and the applicant have lived together as a family for more than a year, and that [REDACTED] has earned their love and trust and has been a great friend and stepfather to him and his sister; (2) the pediatrician for [REDACTED] noting that the daughter has a seizure disorder and expressing concern that her health may worsen due to the emotional stress and disturbed sleep caused by separation from [REDACTED] (3) [REDACTED] confirming that [REDACTED] is a good husband and stepfather and that the couple is hardworking and happy together; and (4) from a friend and owner of a landscaping business stating that Mr. [REDACTED] is dependable, hardworking and trustworthy and offering [REDACTED] employment at \$20 per hour when he returns to the United States. *Id.* The record also includes [REDACTED] tax records for 2000 through 2002, showing earnings of approximately \$30,000, \$29,000 and \$23,800 respectively; and a letter, dated July 14, 2003, from the president of JKZ Industries affirming that [REDACTED] had been employed there since July 2002, was an excellent worker and earned an average weekly pay of \$677.26. The entire record was reviewed and considered in rendering this decision.

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

(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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States without inspection on February 22, 2000; in 2003 he was informed that because he had not been inspected and admitted or paroled into the United States, he was ineligible to adjust status. *See Decision on Application for Status as Permanent Resident*, September 4, 2003. He returned to Honduras on December 15, 2003 to apply for an immigrant visa at the American Consulate there. As he had resided unlawfully in the United States for over a year and is now seeking admission within 10 years of his last departure from the United States, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or to his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. [REDACTED] U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also 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 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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that [REDACTED] was born in 1977 in Honduras. He last entered the United States in 2000. [REDACTED] was born in Michigan in 1968. They were married in May 2002 in Michigan and resided together there until [REDACTED] returned to Honduras in December 2003. [REDACTED] has two children, a son born in 1988 and a daughter who is approximately 14 years old. Income tax records for 2001-2003 indicate that her son lived with her and she supported him during those years; she states on appeal that he has moved in with his father, as she and her daughter have moved in with her parents and their house is too small to also accommodate her son. She claims that [REDACTED] has been the only father that her daughter has known, as her biological father was abusive and was not permitted to be close to her; and that she and her children need [REDACTED] home as soon as possible so they can have a place of their own and move on with their lives. She also states that her parents may have to move due to medical reasons and cannot help her because they live on a tight fixed income; that she does not earn a lot of money because she does not have a college degree; and that she cannot work a lot because of her daughter’s medical problems.

Other than financial records and the statements noted above, there is no evidence in the record that is relevant to a hardship determination, and no supporting evidence from authorities that would give any additional weight to the declarations in the record. A letter from a pediatrician refers to a seizure disorder suffered by [REDACTED] daughter that may be aggravated by the emotional distress of separation from her stepfather. However, [REDACTED] daughter is not a qualifying relative. Moreover, there is no evidence, such as hospital or other medical reports, of a diagnosis of or treatment for any health problems she might have that would be alleviated by the presence of [REDACTED] or that would cause hardship to [REDACTED]; [REDACTED] were denied a waiver of inadmissibility. There is no evidence to support [REDACTED] claim that her daughter’s medical problems interfere with her work, neither in the form of medical records nor employment records. Regarding financial hardship, although [REDACTED] states that she cannot support her family, her tax records indicate that she has earned an adequate yearly income in the past without any contribution from [REDACTED]. [REDACTED] statements and those of her son and aunt indicate that she and her husband enjoyed a loving relationship and that [REDACTED] is suffering emotionally from his absence. She does not mention the possibility of moving to Honduras to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her.

Although the statements [REDACTED] and others are relevant and are taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's wife will suffer emotionally as a result of separation from the applicant and will suffer financially as a result of the loss of her husband's income. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 rests 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.