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FILE:

Office: LIMA, PERU

Date: AUG 02 2007

IN RE:

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Lima, Peru, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Chile who is 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 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the stepmother of a U.S. citizen child. She 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 in the United States with her spouse and stepchild.

The officer in charge 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 District Director*, dated June 7, 2006.

The record reflects that, on December 11, 1999, the applicant was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past her authorized stay. On September 2, 2003, the applicant married her spouse, [REDACTED]. On April 28, 2005, the applicant departed the United States and returned to Chile. On August 19, 2005, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved. On March 1, 2006, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the applicant's waiver is denied. *See Counsel's Brief*, dated August 21, 2006. In support of her contentions, counsel submits the referenced brief, affidavits, medical documentation, financial documentation and family photographs. The entire record was reviewed in rendering a decision in this case.

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 officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the record reflecting and the applicant's admission to being unlawfully present in the United States from June 10, 2000, the date on which her authorized stay expired, until April 28, 2005, the date on which she returned to Chile. Counsel does not contest the officer in charge's determination of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) cases. Thus, hardship to the applicant's U.S. citizen stepchild will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 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).

Since the applicant's spouse is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver request, extreme hardship must be established whether he resides in the United States or Chile.

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).

██████████ is a U.S. citizen by birth. ██████████ has a twelve-year old son from a prior marriage who is a U.S. citizen by birth. The applicant and ██████████ do not have any children together. The record reflects that the applicant is in her 20's and ██████████ is in his 30's.

On appeal, counsel asserts that ██████████ is a self-employed entrepreneur who does not have the time to regularly visit the applicant in Chile because of his work commitments. Counsel asserts that ██████████ is suffering from a serious problem with his left knee and may have to undergo surgery. Counsel asserts that ██████████ has been supporting his wife financially, which greatly undercuts the way to which he is accustomed to living in the United States. Counsel asserts that, as a result, he has had to sacrifice the number of times he is able to visit Chile. Counsel asserts that ██████████ is suffering psychologically due to separation from his wife. Counsel asserts that ██████████ shares parental custody with his ex-spouse of his son. Counsel asserts that ██████████ son spends approximately 45% of his time with ██████████ and he pays child support and covers other necessities for his son. Counsel asserts that ██████████ was able to have significant visits with his son due to the presence of the applicant in the United States. Counsel asserts that, recently, ██████████ relationship with his son has deteriorated because he is unable to leave his son alone in the house due to the applicant's absence. Counsel asserts that ██████████ has been forced to rely on weekend visitations or pay for babysitters since he has no other domestic help in the household. Counsel asserts that ██████████ has even had trouble in caring for the family pets and relies upon the applicant's sister to assist him in their care. Counsel asserts that ██████████'s elderly mother and maternal aunt have become dependent upon him because his mother can no longer walk without assistance and needs a full knee replacement, while his aunt suffers from diabetes, is blind and has suffered two strokes. Counsel asserts that ██████████ wants to have his mother and maternal aunt moved to Florida from New York, but this move has been postponed because the applicant was supposed to be in charge of their care while ██████████ was at work.

██████████, in his affidavits, states that it has been all he can handle to work, travel to Chile, attempt to honor his obligation to his son and try to maintain a transcontinental marriage. He states that he has an extensive visitation schedule with his son, which he has found impossible to keep since the applicant's departure because she is essential in helping him to maintain a balance in this obligation. He states that his mother, who is partially disabled, and maternal aunt, who suffers from serious health issues and is in a nursing home, both of whom live in New York, need his assistance. He states that he used to visit them regularly in New York but has been unable to make a return visit since the applicant's departure. He states that they are in the process of transferring his maternal aunt to Florida.

A medical letter states that ██████████ has a history of tears in his knee and underwent an MRI in July 2006. The results indicate that there was no evidence of gross tears, but that there was a significant amount of fluid. The letter states that the abnormal signal intensity is likely related to a non-displaced tear and edema caused by some recent trauma involving the posterior horn. The medical letter does not indicate that surgery is required or that treatment could not continue without the presence of the applicant or that the applicant's presence is essential to ██████████'s treatment. The letter does not indicate that ██████████'s injury affects his ability to perform daily activities or work duties. Besides the affidavits from ██████████ and his mother, there is no evidence in the record that establishes that ██████████'s mother and maternal aunt are financially or physically dependent upon the applicant for medical reasons. The record does not establish that ██████████ his mother, his maternal aunt or his son suffer from a physical or mental illness that would cause ██████████ to suffer hardship beyond that commonly faced by aliens and families upon removal. While ██████████'s concern that, in the absence of the applicant, he is unable to spend as much time with his son or must pay a babysitter to watch his son is noted, this is a hardship routinely encountered by aliens and their families upon

removal. Additionally, while the AAO acknowledges that [REDACTED] will experience distress and depression as a result of his separation from the applicant, the record does not distinguish these emotions from those commonly felt by aliens and their families upon removal. Accordingly, the applicant has not established that her spouse would suffer extreme hardship if he remained in the United States without her.

There is no evidence in the record to establish that the applicant would be unable to find employment in Chile that could ease [REDACTED]'s financial obligations. The record reflects that the applicant has family members in Chile, such as her parents, who may be able to assist her physically and financially, which could ease [REDACTED]'s financial obligations. While [REDACTED] may have to lower his standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself and his son without income from the applicant, even when combined with the emotional hardship described above.

On appeal, counsel asserts that [REDACTED] has lived in the United States his entire life and his entire family is in the United States. Counsel asserts that [REDACTED] does not speak Spanish and has never contemplated moving to Chile. Counsel asserts that [REDACTED] would be unable to maintain the same employment opportunities in Chile that he has in the United States. Counsel asserts [REDACTED] has no one to help him to establish himself in Chile and he will have to start an entirely new and different life in a county for which he is not culturally prepared. Counsel asserts that [REDACTED]'s relationship with his son will be severely damaged if he moved to Chile because his son would only be able to visit him for three weeks during summer vacation and he is unsure as to whether his ex-spouse would permit his son to travel by himself each year. Counsel asserts that other forms of communication with his son would not replace [REDACTED]'s relationship with his son, which consisted of 45 percent of his time being spent with [REDACTED] while the applicant was in the United States. Counsel asserts that if [REDACTED] moved to Chile he will be unable to care for his mother and maternal aunt due to their medical conditions and benefits that they receive in the United States.

[REDACTED], in his affidavits, states that he is American and he cannot hold any love for any other nation on earth. He states that the first time he ever left the United States was to file the Form I-130 on behalf of his spouse. He states that he is currently running a business while he is in the process of starting a new venture in which he has invested much of his time and money and which would all be lost if he were to relocate to Chile. He also states that if he moved to Chile his mother and maternal aunt would be without any assistance and would be unable to manage without him.

Based on its review of the record, the AAO finds that the majority of the hardships that would be faced by [REDACTED] in relocating to Chile, his adjustment to the economy, environment, separation from friends and family, and an inability to obtain the same opportunities he would receive in the United States, are those routinely encountered by any spouse who accompanies a removed alien to a foreign country. The record, however, also establishes that [REDACTED], if he moved to Chile, would lose contact with his son and would lose his new business. These additional hardships, when combined with the normal disruptions and dislocations created by relocation, are sufficient to establish that [REDACTED] would suffer extreme hardship were he to move with the applicant to Chile. Nevertheless, the applicant's waiver request may not be approved as the applicant's spouse, as previously noted, is not required to reside outside of the United States as a result of denial of the applicant's waiver request and [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is denied admission to the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond 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*, *Supra*; *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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an 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.