

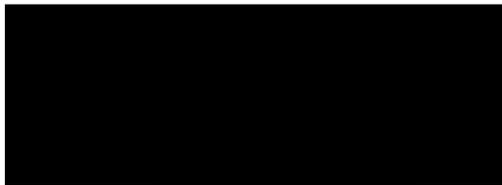
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U.S. Department of Homeland Security
20 Massachusetts Ave. NW Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEGUCIGALPA, HONDURAS

Date:

JAN 18 2007

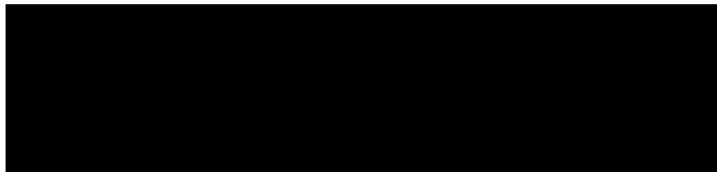
IN RE:



APPLICATION:

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

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.

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 Officer-in-Charge, Tegucigalpa, Honduras. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was 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 and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The Officer-in-Charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse above the normal economic and social disruptions involved in the applicant's continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated February 9, 2005.

On appeal, counsel submits a declaration from the applicant's spouse and additional documentation in support of the applicant's waiver application. *Form I-290B*, dated March 2, 2005.

The record indicates that the applicant entered the United States without inspection on May 12, 2000. The applicant remained in the United States until 2004. Therefore, the applicant accrued unlawful presence from when she entered the United States in May 2000 until 2004, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her 2004 departure from the United States. Therefore, the applicant 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 more than one year.

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.

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. Hardship the alien herself experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Honduras or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states in his declaration that he has six children in the United States, four are adults, one is 11 years old and the youngest child is 10 years old. None of the children are the applicant's children. The applicant's spouse states that he pays child support for his 11-year-old son and that his 10-year-old daughter currently lives with him. He states that he recently traveled to Honduras and there is no work for him in Honduras. He asserts that he cannot live in Honduras with the applicant because he has to pay child support for his son and care for his daughter, who is in second grade and speaks primarily English. The documentation submitted establishes that the applicant's spouse works for a contracting corporation. He submitted no country specific information to support his assertions regarding not being able to find employment in his field in Honduras. Neither does he provide documentation to establish that he is responsible for his 11-year-old son's support or the amount of that support. In addition, the record is not clear as to whether the applicant's spouse's 10-year-old daughter speaks Spanish and would be able to easily adjust to life in Honduras. The applicant's spouse must submit documentation to support his claims. Accordingly, his assertions are insufficient to meet his burden of proof in this proceeding. The current record does not show that he would suffer extreme hardship upon relocation to Honduras.

Furthermore, the applicant's spouse has not shown that he would suffer extreme hardship as a result of being separated from the applicant. In his declaration he simply states that he missed the applicant and it is difficult for him to be a single father. He submitted no documentation or detail about the difficulties he is facing. The AAO recognizes that the applicant's spouse will suffer hardships as a result of being separated from the applicant, however, the current record does not establish that these hardships rise to the level of extreme.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 (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. *Hassan v. INS, supra*, held further that the 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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) 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.