

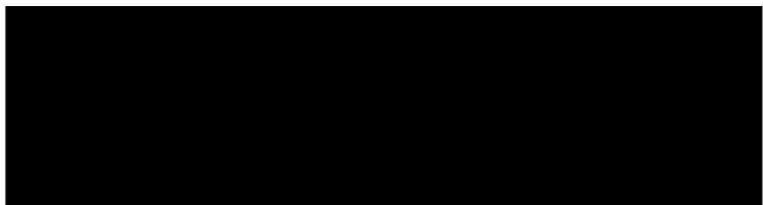
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

43



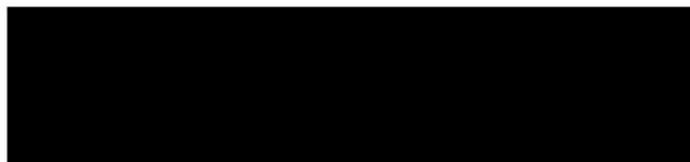
FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: DEC 19 2008

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. § 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).

John F. Grissom, Acting 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 record reflects that 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)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed and departing the United States while an order of removal was outstanding, and 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 more than one year. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 212(a)(9)(A)(iii), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated December 4, 2006.

The AAO notes that in addition to the Application for Waiver of Ground of Excludability (Form I-601), the applicant also filed an Application for Permission to Reapply for Admission Into the United States After Departure or Removal (Form I-212), which was initially denied on October 12, 2004, by the Director, Los Angeles. However, on appeal, the AAO withdrew the Director's decision and remanded the case for further review on January 30, 2006. On remand, the Director denied the applicant's Form I-212 application on March 17, 2006, which the AAO affirmed on August 28, 2006. The instant appeal addresses only the denial of the applicant's Form I-601 waiver application, *i.e.*, whether the applicant has established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

On appeal, the applicant's wife, [REDACTED] contends that the officer in charge used the incorrect standard in deciding that no hardship existed. In addition, [REDACTED] submits additional information regarding her physical health.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on December 8, 1996; a letter from [REDACTED] vocational rehabilitation consultant; copies of [REDACTED] numerous prescription medications; medical records and other medical and disability related documents; copies of conviction documents; a copy of [REDACTED] naturalization certificate; letters from the applicant's employers; a letter from Ms. [REDACTED] employer; several letters of support from family and friends; a copy of the applicant's 1990 deportation order; declarations from [REDACTED]; and tax and financial documents. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

In this case, the record indicates, and the applicant does not contest, that he entered the United States without inspection in September 1988. On April 21, 1989, the applicant was issued an Order to Show Cause by the former Immigration and Naturalization Service. On July 25, 1990, the applicant failed to appear before an immigration judge and was ordered removed *in absentia*. The applicant filed an appeal with the Board of Immigration Appeals, which was dismissed on February 25, 1992. The applicant was ordered to report for deportation on July 6, 1992, but failed to do so and remained in the United States until July 2005.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in July 2005.¹ Therefore, the applicant accrued unlawful presence for over eight years. He now seeks admission

¹ Although the proper filing of an affirmative application for adjustment of status has been designated by the Secretary as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act, *see Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*, there is no indication in the record that the applicant properly filed an adjustment application. Rather, the applicant filed an adjustment application on March 12, 1997, which was rejected as improperly filed with the District Director instead of the Immigration Judge. *Letter from [REDACTED], dated April 16, 2001.*

within ten years of his July 2005 departure. Accordingly, he 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.

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 applicant himself may experience is not a permissible consideration under the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

The applicant's wife contends she has suffered, and will continue to suffer, extreme hardship if the applicant's waiver application is denied. As stated above, hardship on the applicant himself is not a permissible consideration under the statute. *See* section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2); section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Therefore, only the hardship to the applicant's wife, [REDACTED], will be evaluated.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

[REDACTED] states that her husband is everything to her and that he is her "other half." *Letter from* [REDACTED], dated July 8, 2005. Because she does not drive, her husband drives her everywhere, including to the hospital when she is not feeling well. *Id.* [REDACTED] contends she is under hormonal treatment because she has no uterus. *Id.* In addition, [REDACTED] states that in December 2003, she suffered a work-related injury that resulted in two knee surgeries. *Declaration of* [REDACTED], dated February 10, 2007. She states she still experiences significant pain in her knee and cannot climb a flight of stairs. *Id.* [REDACTED] further states that she has "shooting pain" in her arm from carpal tunnel syndrome. *Id.* She takes between twenty and twenty-five pills daily. *Id.* She asserts that because she is under continuous medical treatment, she cannot visit her husband and has not seen him in about two years. *Id.* She claims her husband is also very sick, and that her son, who has always considered the applicant as a father, cries for him at night. *Id.*

The AAO recognizes that [REDACTED] has endured hardship as a result of her separation from the applicant. However, the AAO notes that the applicant and [REDACTED] married on December 8, 1996, more than six years after the applicant was ordered removed in 1990. Therefore, the equity of their marriage and the weight given to any hardship [REDACTED] may experience is diminished as they married with the knowledge that the applicant might be deported. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a "post-deportation equity" need not be accorded great weight).

Regarding [REDACTED] health problems, there is insufficient evidence in the record to show extreme hardship. The only evidence in the record from a health care professional is a letter from a Vocational Rehabilitation Consultant, which states that [REDACTED] participated in vocational rehabilitation from April 28, 2006, until November 18, 2006, and is no longer receiving any vocational rehabilitation benefits. *Letter from [REDACTED]*, dated January 15, 2007. This letter does not specify why [REDACTED] participated in vocational rehabilitation for just over six months in 2006, or whether her treatment was related to her 2003 knee injury. *Id.* In addition, there is no letter in plain language from a physician describing the exact nature and severity of [REDACTED]'s health problems with respect to her hormonal treatment, knee injury, or carpal tunnel syndrome. Although Ms. [REDACTED] photocopied the bottles of six prescriptions for her appeal, including prescription ibuprofen and an antidepressant, there is no letter or statement from any health care professional describing the medications, treatment, and assistance [REDACTED] needs. Moreover, [REDACTED] does not elaborate or explain her contention that she is unable to visit her husband in Honduras because she is "under continuous medical treatment." *Declaration of [REDACTED] supra*. It is unclear from the record what type of medical treatment she receives and how often she receives it. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

To the extent [REDACTED] relies on the applicant for emotional support, although the AAO is sympathetic to their circumstances, [REDACTED] does not address whether she can move back to Honduras, where she was born, in order to avoid the hardship of separation. There is no evidence in the record that [REDACTED]'s health problems could not be managed in Honduras. If [REDACTED] remains in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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 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 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.