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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: TEGUCIGALPA, HONDURAS

Date: MAY 06 2008

IN RE:

Applicant:



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 waiver application was denied by the Officer-in-Charge, Tegucigalpa, Honduras, and the appeal was rejected as untimely filed by the Administrative Appeals Office (AAO). It was returned to the Officer-in-Charge for consideration as a motion to reopen. Additional information received leads the AAO to believe that the appeal was timely filed. Therefore, the AAO *sua sponte* reopens its decision rejecting the appeal as untimely filed. 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. **The applicant is married to a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated January 30, 2007.***

The AAO will first address the finding of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The applicant was born on November 18, 1976, as shown by his birth certificate, and was 19 years old when he illegally entered the United States without inspection on March 11, 1995 near Brownsville, Texas. On

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<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

January 25 1999, the applicant filed an application for Temporary Protected Status, which was approved on November 9, 2000. On May 1, 2001, the applicant filed an adjustment application.

For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence on April 1, 1997. From April 1, 1997 to November 9, 2000, he accrued three years of unlawful presence. When the applicant voluntarily departed from the country in 2006, he triggered the ten-year-bar. Consequently, the finding of inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 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 is not a consideration under section 212(a)(9)(B)(v) and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant’s wife. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the submitted documentation establishes extreme hardship to the applicant’s wife. Counsel states that the applicant’s wife has indicated that Honduras is an unsafe country; that she has lived her entire life in the United States; that all of her family members, except for her husband, reside here; and that she has been employed at the same job for 12 years. Counsel states that the applicant’s wife would continue to experience financial and emotional hardship if she remains separated from her husband, who has been in Honduras for the past year. He states that the applicant’s wife is earning \$110 more than she spends each month, and would have to sell their house and cars if the waiver application were denied.

The record contains letters, a divorce decree, birth and marriage certificates, a list of household expenses, a U.S. Department of State country report on Honduras dated 2006, photographs, a Mercy Medical Center explanation of benefits, a mortgage showing the borrowing of \$62,400, and other documents.

In an undated letter the applicant’s wife conveys that she has a close relationship with her husband, who she has been married to for five years, and has never been separated from him since their marriage. She states that on account of their separation their attempt to have a baby has been placed on hold, which is affecting her because she is 35 years old. She conveys that her husband is willing to adopt if they are unable to have a child. She states that she worries about her husband because she believes that Honduras is an unsafe country. She indicates that it would be traumatic if her husband were not allowed to return to the United States.

In the undated letter submitted on appeal, the applicant's wife claims that her husband's absence is causing emotional and financial difficulties; it is difficult paying for the house and the bills and supporting her husband in Honduras. She states that if her husband were not allowed to return to the United States soon she will have to sell their house. She states that moving to Honduras scares her because it is a dangerous place and they would have difficulties trying to survive. She conveys that she has held the same job for 12 years and they have worked hard for what they own. She states that she lives near her family members and her mother would have a heart attack if she moved to Honduras. The applicant's wife states that her husband has not been able to obtain employment in Honduras because the Honduran government is unwilling to issue identification to him; they are claiming that he is not from Honduras.

The submitted list of household expenses shows monthly income of \$2,400 and expenses of \$2,517.39.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's wife must be established in the event that she joins the applicant, and in the alternative, that she remains in the United States. 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 fails to establish that the applicant's wife would endure extreme hardship if she remained in the United States without her husband.

The AAO finds that the submitted documentation is insufficient to establish that the applicant wife would experience extreme financial hardship if she remained in the United States without her husband. No documentation has been furnished showing the monthly income of the applicant's wife and no supporting documentation has been provided of the monthly household expenses shown in the submitted list. 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)).

With regard to family separation, courts in the United States have stated that “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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record reflects that the applicant’s wife is very concerned about separation from her husband and the impact of the separation on their ability to have a child. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The record establishes that the applicant’s wife would experience extreme hardship if she were to join him in Honduras.

The conditions in the country where the applicant’s wife would live if she joined her husband are a relevant hardship consideration. While political and economic conditions in an alien’s homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The applicant’s wife states that Honduras is not a safe country in which to live and that surviving there would be difficult. The AAO notes that Honduras has been designated for temporary protected status through January 5, 2009. *See, Federal Register: May 29, 2007 (Volume 72, Number 102), Notices, Page 29529-29534.* For this reason, the AAO finds that the applicant’s wife would experience extreme hardship if she were to live in Honduras.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship in the event the applicant's wife were to live in Honduras. However, it has not been established in the event she were to remain in the United States without her husband. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.