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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (PANAMA) Date: **MAY 12 2008**
(GYQ 2005758033)

IN RE: Applicant: [REDACTED]

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The record reflects that the applicant is a native and citizen of Ecuador. The applicant 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 seeks a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish that his wife would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

Through counsel, the applicant indicates that U.S. Citizenship and Immigration Services (CIS) failed to advise him of the legal and evidentiary burden involved in establishing extreme hardship, and that CIS abused its discretion by failing to properly weigh each piece of hardship evidence submitted by the applicant. The applicant asserts further that his wife and child will suffer extreme financial and emotional hardship if he is denied admission into the United States.

The abuse of discretion standard requires that all relevant relief factors be taken into account. *Casem v. INS*, 8 F.3d 700, 702 (9th Cir. 1993.) Upon review of the record the AAO finds that the district director generally addressed the hardship factors presented by the applicant, and that the district director's conclusion was sufficiently explained and supported. The AAO notes further that even if the district director had failed to take into account all of the hardship factors in the applicant's case, the issue would be remedied by the AAO's de novo review of the evidence on appeal.

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

[A]ny 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.

The record reflects that the applicant entered the United States without parole or admission in 1998. The applicant remained in the U.S. unlawfully, and he married a U.S. citizen (Ms [REDACTED]) on February 19, 2005. The applicant departed the United States in February 2006. He has been outside of the United States since that date.

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years.

See In re Rodarte-Roman, 23 I&N Dec. 905, 908 (BIA 2006.) The applicant was unlawfully present in the United States for more than one year between 1998 and his departure in February 2006, and he is seeking admission less than ten years after his February 2006 departure from the United States. The applicant is therefore subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

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

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 applicant is married to a U.S. citizen. The applicant's wife is thus a qualifying relative for section 212(a)(9)(B)(v) of the Act, extreme hardship waiver purposes. It is noted that U.S. citizen and lawful permanent resident children are not qualifying relatives for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. Any hardship claims made with regard to the applicant's child shall therefore be considered only to the extent that it is shown to cause hardship to the applicant's wife.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The record contains the following evidence relating to the applicant's extreme hardship claim:

An April 30, 2007, letter signed by M [REDACTED], stating that she has been unable to afford her family's life style since the applicant has been in Ecuador, and stating that her life has changed completely for the worse. M [REDACTED] indicates that although she was born in Ecuador, she has lived in the United States since she was twelve years old. She states that she received her BA in December 2005, and that she wishes to pursue a law degree. [REDACTED] indicates that she is

eight months pre ant and that she feels she will be unable to take care of her son by herself after he is born. [REDACTED] states that she feels depressed by her situation and that she lacks sleep and cries every night. She states further that if the applicant is denied admission into the U.S., she will move to Ecuador. She indicates that such a move would affect the family's dreams and goals for themselves and their son, and she indicates that her son would not have the education, medical insurance and professional opportunities available in the United States.

An April 12, 2007, letter signed by [REDACTED] reflecting that [REDACTED] was pregnant, that her pregnancy was fairly **uncomplicated**, and that between March and April, 2007, there was some lag in the growth of [REDACTED]'s fetus.

An Illinois birth certificate, and medical documents reflecting that [REDACTED] gave birth to a healthy boy on May 15, 2007.

An undated report prepared by Licensed Clinical Social Worker, [REDACTED], at the request of [REDACTED]'s attorney, reflecting that she met with [REDACTED] for 1 1/2 hours on April 24, 2007. The report indicates that [REDACTED] and her siblings were born in Ecuador and that they immigrated to the United States in 1992, through [REDACTED]'s parents. The report also indicates that [REDACTED] became a naturalized U.S. citizen in 1999, and that she resides in a multi-unit residential building owned by her parents. At the time of her interview, [REDACTED] worked full time as a congressional aide, and she also worked part-time as a front desk supervisor at a hotel. The report indicates that [REDACTED] would take unpaid leave after the **birth of her baby**, and the report indicates that [REDACTED]'s parents would be unable to provide day care services or money to [REDACTED] because her mother is partially paralyzed due to several strokes, and her father is the sole wage earner and also provides for [REDACTED] brothers who are attending college. The report indicates that [REDACTED] has **several financial obligations**, including credit card debt related to [REDACTED]'s monthly trips to Ecuador to visit the applicant, car payments, and sending money to the applicant in Ecuador. The report indicates that the applicant lives with [REDACTED]'s grandmother in the city of Cuenca, and that he earns about \$250.00 a month **teaching English** and helping a friend as an unlicensed engineer. The report concludes by stating that [REDACTED] is going through a severe stressful period in her life, and the report states that it is in the best interest of [REDACTED] and her unborn child to have the applicant residing with them in the United States.

A March 25, 2008, letter signed by [REDACTED]'s employer, stating that [REDACTED] is the sole provider for her one year old son, and that her son has only seen his father a few times on brief visits to Ecuador. The letter indicates that [REDACTED] **also became the primary care provider** for her mother's physical and medical needs after her mother suffered a stroke that left her partially paralyzed. The letter indicates that [REDACTED] **is under extreme emotional and economic stress**, and the letter indicates that the stress would be reduced if the applicant were allowed admission into the United States.

A copy of a February 2008, Gymboree Play and Music bill reflecting [REDACTED]'s \$198.00 quarterly recreation costs for her son.

December 2007 and January 2008, credit company statements reflecting that [REDACTED] is past due on her loan payments and that she risks further legal action by the credit companies.

Copies of the applicant's rental receipts reflecting [REDACTED]'s payment of \$550.00 in rent in 2006, and \$700.00 in rent in 2007 and 2008.

Medical documentation reflecting that [REDACTED]'s mother suffers partial facial paralysis and pain, and an August 23, 2007, letter signed by [REDACTED], stating that Ms. [REDACTED]'s mother is being treated for a chronic medical condition requiring multiple office visits to specialists and physical therapy. The letter indicates that [REDACTED] has been the main person arranging for, and accompanying her mother to these visits, and the letter indicates that the applicant's presence in the United States would reduce hardship that Ms. [REDACTED] experiences due to caretaking responsibilities for her mother and son.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish his wife would suffer hardship beyond that normally experienced upon removal of a family member, if she remains in the U.S. without the applicant, or if she moves to Ecuador to be with the applicant.

The evidence fails to establish that [REDACTED] would suffer extreme emotional or physical hardship if the applicant were denied admission into the United States. The applicant failed to present evidence establishing that [REDACTED] presently suffers from any physical or medical conditions. Furthermore, the AAO notes that the report from [REDACTED] LCSW, is based on one interview lasting 1 ½ hours. The report contains no medical or psychological diagnoses, and it does not discuss ongoing emotional health related needs or treatment. The recommendation that it is in [REDACTED]'s best interest to reside with her husband in the United States is also non-specific and fails to demonstrate that [REDACTED] would suffer extreme emotional hardship if the applicant's admission into the United States were denied.

The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." Citing the Seventh and Ninth U.S. Circuit Court of Appeals cases, *Urban v. INS*, 123 F.3d 644 (7th Cir. 1997) and *Tukhowinich v. INS*, 64 F.3d 460 (9th Cir. 1995), however, counsel for the applicant asserts that, "economic hardship may sufficiently establish extreme hardship where there is a complete inability to find work," and that, "non-economic hardship which flows from economic concerns is an indication of extreme hardship."

The AAO finds that the applicant has failed to demonstrate that his wife is experiencing extreme financial hardship. The financial documentation submitted does not give a complete picture of her expenses and provides no information regarding her income. The applicant additionally failed to establish that his wife would suffer non-economic hardship beyond that normally associated with the deportation of a family member, if the applicant is denied admission into the United States. Although the evidence indicates that [REDACTED] arranges for, and takes her mother to medical appointments and physical therapy sessions, the record contains no evidence to establish that [REDACTED]'s father or brothers would be unable to assume this function. The record additionally lacks evidence to indicate that any hardship suffered by the applicant's child would cause [REDACTED] to suffer extreme hardship.

The applicant has also failed to establish that his wife would suffer extreme hardship if the applicant were denied admission into the United States and she moved to Ecuador. The AAO notes that [REDACTED] was born in Ecuador, and that she lived there until she was twelve years old. The AAO notes further that the applicant lives with [REDACTED]'s grandmother in a large city in Ecuador. The applicant failed to submit corroborative evidence to establish that he or [REDACTED] would be unable to find work in Ecuador. The applicant additionally failed to establish that his family would not have educational or medical access in Ecuador. The U.S. Ninth Circuit Court of Appeals held in *Shoostary v. INS*, 39 F.3d 1049, 1051, (9th Cir. 1994) that the, "extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." It has additionally been held that, hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has not been found to rise to the level of extreme hardship. See *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.) Furthermore, "[t]he 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." *Shoostary v. INS, supra*.

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that his wife will suffer extreme hardship if he is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.