

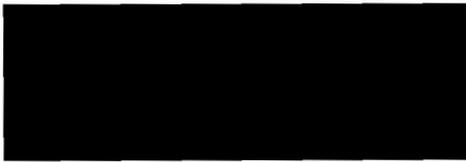


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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 24 2008

IN RE: [REDACTED]

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

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Guyana and a permanent resident of Canada. Presently, she is residing in Canada with her two U.S. citizen children. She 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 one year or more. 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 [REDACTED], her U.S. lawful permanent resident spouse.

In a decision dated June 5, 2006, the director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant asserts that the applicant's U.S. lawful permanent resident husband and U.S. citizen children are suffering harm that exceeds the normal pain and suffering that any separated family would endure, and thus extreme hardship to a qualifying relative has been established. Counsel submitted additional evidence in support of these claims.

The entire record was reviewed and considered in rendering this decision.

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

(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 [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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant resided unlawfully in the United States from October 1994 through March 2004. The applicant departed the United States for Canada in March 2004 and applied for an immigrant visa and alien registration at the U.S. Consulate in Montreal, Canada on June 29, 2005. As she had resided unlawfully in the United States for over a year and is

now seeking admission within 10 years of her last departure from the United States, the director correctly found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

U. S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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 indicates that the applicant was born in Guyana in 1969 and admitted to having last entered the United States in October 1994, using another person's documentation. In March 2004, the applicant departed the United States for Canada and applied for an immigrant visa and alien registration at the U.S. Consulate in Montreal, Canada on June 29, 2005. Upon refusal of her visa applications on the grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the applicant filed a Form I-601 on January 24, 2006. Documentation in the record indicates that the applicant and her current husband were married in Queens, New York in September 2001. They have two children, born in the United States in June 2000 and October 2001. The applicant also submitted a letter from her husband, dated September 10, 2005, stating that they are finding it very difficult to cope with the emotional and financial stress resulting from the separation. Mr. [REDACTED] states that he has had to seek professional psychiatric help for his mental stress and his work performance has been adversely affected. Additionally, [REDACTED] stated that the separation is having a detrimental effect on the children, who now reside in Canada with their mother. The record also contains a letter dated August 8, 2005 from [REDACTED] LCSW, who identified herself as [REDACTED] therapist. [REDACTED] stated that [REDACTED] has been diagnosed with dysthymia and generalized anxiety disorder and has been in treatment with her for several months. It is noted that [REDACTED] claimed that [REDACTED] is caring for the two children himself while working full time.

In a letter dated April 4, 2006, responding to a request for further evidence from Citizenship and Immigration Services (CIS), the applicant indicated that the children are currently residing with her in Canada. The applicant stated that in order to meet the financial burden of running two households, she has to work and the children have to be in daycare while she is at work. The applicant stated that the children only see their father once or twice a year, and the situation is taking a heavy toll emotionally on the whole family. The applicant also submitted copies of various U.S. Internal Revenue Service (IRS) and New York State tax documentation for the year 2005, and the 2005 annual mortgage statement for a property in Toronto, Canada, in both her and her husband's names.<sup>1</sup>

In denying the application, the director found that the applicant has failed to show that extreme hardship exists for a qualifying relative. The director noted that the evidence of record shows that the claimed hardship consists of nothing more than mere separation, and extra ordinary circumstances warranting an exercise of discretion by CIS has not been demonstrated.

On appeal, counsel for the applicant asserts that the applicant's U.S. lawful permanent resident husband and U.S. citizen children are suffering harm that exceeds the normal pain and suffering that any separated family would endure. In support of this claim, counsel submitted (1) a letter dated August 16, 2006 from the pediatrician for the applicant's children noting that the children are exhibiting behavioral problems and are experiencing a decrease in physical growth; (2) a letter dated August 16, 2006 from [REDACTED] employer indicating that the strain of being separated from his family, and his absences from work to visit his family in Canada, have seriously affected [REDACTED] work as a technical support supervisor and in turn has affected the company's ability to function efficiently; (3) copies of brochures relating to [REDACTED] employer, and

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<sup>1</sup> It is noted that the mortgage statement is for a property at [REDACTED] in Toronto, Ontario while the address identified throughout the record as the applicant's address in Canada is [REDACTED]. The applicant provided no explanation for this discrepancy.

(4) [REDACTED] paystub for the pay period ending August 15, 2006 and IRS Forms W-2, Wage and Tax Statement, for the years 2002, 2003 and 2005.

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 husband, the only qualifying relative in this instance, faces extreme hardship due to the applicant's inadmissibility.

Initially, the AAO notes the statements of the applicant, her husband, and the letter from the pediatrician regarding the emotional and physical decline experienced by the applicant's two children during the years of separation from their father. However, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under Section 212(a)(9)(B)(v) of the Act.

The applicant's husband, [REDACTED] claimed that he suffers mental stress for which he has to seek psychiatric help and submitted a letter dated August 2005 from [REDACTED] who claimed to have been treating him for dysthymia and generalized anxiety disorder "for several months" as of August 2005. However, neither [REDACTED] nor [REDACTED] has provided any information regarding her qualification to diagnose or treat his symptoms. Moreover, the validity of [REDACTED] statements is further called into question, given her claim that his condition is the direct result of having to care for his two children by himself while working full time, which is inconsistent with statements from both the applicant and Mr. [REDACTED] that the children are actually living with their mother in Canada. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

[REDACTED] also claimed that the stress of separation has a negative effect on his work performance. In support of that claim, counsel submitted a letter from [REDACTED] employer, who described [REDACTED] role within the company and observed that since the separation from his family, he has become "noticeably distracted, short tempered and agitated. The employer also noted that [REDACTED] state of mind appeared to improve after visiting his family in Canada; however, given his supervisory role in the company, his absences cause undue hardship to the company. While the AAO has no reason to doubt the veracity of these statements, they do not support the conclusion that the stress [REDACTED] suffers rises to the level of extreme hardship.

Finally, the applicant and her husband also claimed that their separation resulted in financial hardship since they must maintain two households in the United States and in Canada. However, the applicant has not provided sufficient information to demonstrate the claimed financial hardship. While they claim that both must work in order to sustain two households, the applicant has provided no information relating to her employment or income, nor does the record contain any information with respect to the residence [REDACTED] must maintain in the United States. 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)). Moreover, as previously noted, no explanation has been given for the discrepancy between the applicant's Canadian address of record and the Canadian address on the mortgage statement submitted by the

applicant. Again, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 591.

It is noted that [redacted] does not mention the possibility of moving to Canada to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. As such, the AAO is unable to find that he would suffer extreme hardship if he were to join his wife in Canada.

The AAO recognizes that the applicant's husband suffers emotionally and financially as the result of separation from his wife and children. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there is a deep level of affection and a certain amount of emotional and social interdependence. While 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 rests 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.