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**U.S. Citizenship  
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Services**

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FILE:

Office: MIAMI, FLORIDA

Date:

**FEB 19 2009**

IN RE:

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 PETITIONER:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela who has resided in the United States since November 2, 1999, when she was admitted as a B2 visitor for pleasure with permission to remain until November 2, 1999. The applicant remained in the United States until September 2006, when she returned to Venezuela and then reentered with an advance parole document. She was found to be inadmissible to the United States under 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 for a period of one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. 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 remain in the United States with her husband and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated October 11, 2007.

On appeal, the applicant asserts that her husband would suffer extreme hardship if she had to depart the United States. *See Statement in Support of Notice of Appeal to the AAO, Form I-290B*. Specifically, the applicant states her husband lived a lonely life before they met, and together they have formed a family and have made plans for the future. She states that he would not be able to get over the loss if she had to depart the country, and would not be able to live peacefully in Venezuela under the rule of Hugo Chavez. *Id.* In support of the waiver application and appeal the applicant submitted letters from the applicant and her husband, and documentation related to her sister in Venezuela, who died of cancer after the applicant visited her in 2006. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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.

The record contains references to hardship the applicant's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Venezuela who has resided in the United States since May 3, 1999, when she entered as a visitor for pleasure with permission to remain until November 2, 1999. The applicant remained in the United States after that date and filed an Application for Adjustment of Status (Form I-485) on June 19, 2006. The applicant subsequently returned to Venezuela and then reentered with an advance parole document on October 1, 2006. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from to November 2, 1999 to June 19, 2006, when she filed her application for adjustment of status. The

applicant's husband is a thirty-seven year-old native and citizen of the United States. The applicant and her husband reside in Miami, Florida with the applicant's seventeen year-old daughter.

The applicant asserts that her husband would suffer extreme hardship if he remained in the United States without her or if he relocated to Venezuela. The applicant states that she and her husband are law-abiding, working people who "only want to remain together." She states,

My husband is a good man. He used to live a very lonely life before he met me, now he is a different person, he is full of joy and we have made wonderful plans for our future. Kindly take into account that if my application is denied and I am forced to leave the country he would not be able to get over the loss. *Statement of [REDACTED]* dated October 29, 2007

The applicant's husband states that since their marriage they have "formed a loving family unit" and further states that they are law-abiding people who would like to raise their family together in the United States. *Statement of [REDACTED]* dated October 29, 2007. The AAO notes that no documentation was submitted concerning the applicant's husband's mental health and the potential effects of separation from the applicant. 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)).

The evidence does not establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The applicant further asserts that her husband would suffer hardship if he relocated to Venezuela with her because of political reasons. *Statement of [REDACTED]* at 2. She states that President Hugo Chavez is "a communist that negatively and sadly is transforming" the country, and that they "would not be able to live peacefully in a country that is becoming the South American Cuba." *Id.* The applicant's husband states that his parents emigrated from Cuba to escape the communist regime there and that the political climate in Venezuela "seems to be going down the same disastrous path that Cuba has already endured." *Statement of [REDACTED]* at 2. The AAO notes that no documentation concerning political, economic, or social conditions in Venezuela was submitted to support the assertion that the applicant's husband would suffer hardship there. As noted above, Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

There is no evidence on the record to establish that the applicant's husband would experience any hardship beyond the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any 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 has failed to establish extreme hardship to her U.S. Citizen spouse as required under sections 212(a)(9)(B)(v) of the Act.

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. 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.