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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: Office: OAKLAND PARK, FL Date: JUL 17 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

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 Field Office Director, Oakland Park, Florida and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia 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 and seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and the father of four U.S. citizens, three of them his stepchildren. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The Field Office Director found that the record failed to establish that the applicant's spouse, [REDACTED], would suffer extreme hardship if his waiver request were to be denied. *Decision of the Field Office Director*, dated February 13, 2009.

On appeal, the counsel for the applicant states that the applicant's children have learning disabilities that make his case meritorious. She submits additional evidence to document these learning disabilities, as well as sworn statements from the applicant and [REDACTED] *Form I-290B, Notice of Appeal or Motion*, dated March 10, 2009.

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.

The record reflects that in 1988, the applicant then 11 years of age, entered the United States with his parents as a nonimmigrant visitor. The family remained in the United States and the applicant did not

return to Bolivia until July 1999. On November 21, 1999, the applicant returned to the United States on a B-2 visitor's visa, valid for seven days from date of issuance. He remained in the United States until November 21, 2000. On November 29, 2001, the applicant again entered the United States as a B-2 visitor, admitted until May 29, 2002. He married [REDACTED] on April 21, 2002. On May 29, 2002, he filed a Form I-485, based on the Form I-130, Petition for Alien Relative, submitted by [REDACTED]. On June 7, 2002, the applicant departed the United States under a grant of advance parole, returning on June 23, 2002.¹ Therefore, the record establishes that the applicant accrued two separate periods of unlawful presence under the Act: from April 1, 1997, the effective date of the unlawful presence provisions of the Act until July 1999, when he first departed the United States; and from November 27, 1999, the day after the validity of his nonimmigrant visa expired, until November 21, 2000 when he again returned to Bolivia. As the applicant accrued more than one year of unlawful presence between April 1, 1997 and July 1999 and is seeking admission to the United States within ten years of 2002 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act .

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an alien 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. The BIA has held:

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)].

¹ The record is unclear as to whether the applicant has again departed the United States since his return. The AAO notes that there is no documentation of a subsequent departure in the record, but observes that [REDACTED] May 10, 2009 statement indicates that she traveled to Bolivia for two weeks in May 2007.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS, supra*, held further that the 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.

The AAO notes that extreme hardship to [REDACTED] must be established whether she resides in Bolivia or remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to Bolivia. Prior counsel, in a February 25, 2003 letter, states that [REDACTED] is a U.S. citizen, born in the United States; that she does not speak Spanish and is the mother of four children. In a sworn statement, dated March 12, 2009, the applicant asserts that the denial of his waiver application will require [REDACTED] and his children to face two devastating options, to live in the United States without a father and husband or to live in Bolivia and settle for a third world education system, increasing violence and unrest, and diminishing human rights. The applicant indicates that two of his stepchildren, have been diagnosed with learning disabilities and that relocation to Bolivia would deprive them of the special education programs they need and are now receiving. Bolivia, the applicant contends, does not have the kind of specialized education programs available in the United States and his two stepchildren, who already have trouble with reading and comprehension in English, would have to attend school taught in Spanish. In a companion statement, dated March 10, 2009, [REDACTED] contends that she has done extensive research on special education programs in Bolivia and that there are no programs to deal with the type of learning disabilities that affect her children. She contends that she cannot limit her children's progress in life by taking them to a country that is unable to help them develop their academic potential. [REDACTED] also asserts that relocating to Bolivia would place her children in jeopardy, subjecting them to criminals who target Americans. She states that on a recent visit to Bolivia, she and her youngest child could not leave the house without a male escort because they would have been easy prey for kidnappers, robbers and rapists.

The record contains documentation issued by the School Board of Broward County, Florida that establishes that two of the applicant's children suffer from significant learning disabilities and that both are now enrolled in Individual Educational Plans to address these disabilities. One of the children also exhibits violent behavior in the classroom. The record further includes a December 12, 2007 "Country Specific Information" report issued by the U.S. Department of State that describes Bolivia as a "medium to high crime threat country." The reports advises U.S. tourists to take precautions to avoid being victimized by crime and specifically notes that Coronilla Hill, a landmark in Cochabamba, the applicant's city of residence in Bolivia, has become a dangerous place for both tourists and Bolivians. The State Department also indicates that Americans in Bolivia must be alert to possible theft and

kidnapping threats. With regard to health and medical information, the report indicates that medical facilities in Bolivia are generally inadequate to handle serious medical conditions. It further points out that sanitary practices are far below U.S. standards and result in widespread gastrointestinal illness. The record includes no information relating to the availability of education or specialized educational services in Bolivia.

Having considered the record before it, specifically the extensive psychological reports and other documentation prepared by the School Board of Broward County on each of the applicant's children who have been identified with learning disabilities, the AAO finds the applicant to have established that [REDACTED] would suffer extreme hardship if the family were to relocate to Bolivia. It concludes that having to remove her children from their current individual educational plans, place them in an unfamiliar educational setting where they do not speak or read the language of instruction and advocate for their special educational needs within that same unfamiliar setting would result in extreme hardship for [REDACTED] who does not speak Spanish and has visited Bolivia once for a two-week period.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant. In her statement, [REDACTED] asserts that her world would collapse if she lost the applicant. She further asserts that although the family has never been on welfare or any type of government assistance program, the applicant's removal would result in five more names being added to the welfare and food stamp rolls in Florida. She states that she has been laid off from her full-time employment and only works part time, although she is seeking full-time employment. [REDACTED] also asserts that the prospect of being separated from the applicant is driving her into a deep depression. The applicant states that his spouse was laid off from her job and that he is the sole provider for the family, including all four children. He notes that [REDACTED] does not receive any financial help from the natural fathers of two of his stepchildren, and that one of these individuals was previously convicted of child abuse and the other is in prison until 2022.

The AAO acknowledges that [REDACTED] would experience hardship as a result of the applicant's inadmissibility to the United States. It notes, however, that the record does not distinguish her hardship from that normally experienced by individuals whose spouses reside outside the United States as a result of exclusion or removal. The applicant has submitted insufficient documentary evidence of his and Ms. [REDACTED] financial circumstances, including proof that [REDACTED] has been laid off and is unemployed or employed on a part-time basis. Moreover, the record contains no documentary evidence to establish that the applicant would be unable to obtain employment upon his return to Bolivia and, thereby, financially assist his family from outside the United States. The AAO also notes that the record fails to provide evidence in support of [REDACTED]' claim, e.g., an evaluation prepared by a licensed medical practitioner, that she is experiencing deep depression at the prospect of the applicant's removal from the United States.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, 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 point made in this and prior decisions

on this matter is that 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 section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO does not find the applicant to have established that [REDACTED] would face extreme hardship if he were to be excluded and she remained in the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the AAO finds that the hardships described in the record do not support a finding that [REDACTED] would face extreme hardship if the applicant is refused admission. As the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, 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) 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.