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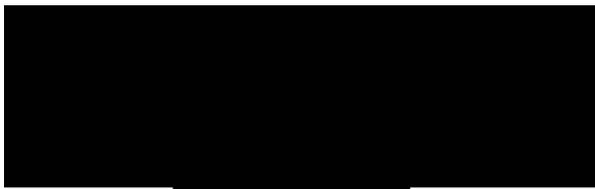
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS Date: MAR 31 2009

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)(v)

ON BEHALF OF APPLICANT:

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 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 Officer in Charge (OIC), Tegucigalpa, Honduras. 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 Honduras. 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. The applicant 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 her U.S. citizen spouse.

In a decision dated November 9, 2006, the OIC 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, the applicant's spouse asserted on her behalf that the applicant was not aware that extreme hardship to the qualifying relative must be established. The applicant submitted additional evidence.

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.

The record reflects that the applicant last entered the United States without inspection in September 2000 and remained until her departure from the United States in October 2005. Thus, the applicant had accrued more than one year of unlawful presence in the United States, and as she is now seeking admission within 10 years of her last departure from the United States, the OIC correctly found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her ground of inadmissibility.

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 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 and her children, if any, 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 (BIA) 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.

On the Form I-601 filed on December 13, 2005, the applicant listed her U.S. citizen spouse as a qualifying relative. The only evidence submitted with the Form I-601 in support of the applicant's

hardship claim is an undated letter from her husband. In his letter, the applicant's husband stated that he is afraid of what might happen to his wife, living apart from him without money, a job, or health insurance. He described how he misses her companionship and stated that if he could afford it, he would move to Honduras with her. He stated that he and the applicant had planned to start a family and would not be able to do so if they are not together.

In denying the application, the OIC found that the evidence of record does not demonstrate the level of extreme hardship required before the Secretary may exercise his discretion in granting the waiver. Therefore, the OIC denied the waiver application.

On appeal, the applicant's husband stated that he and the applicant were not aware that extreme hardship to him must be established. He requested that the AAO consider further evidence submitted on appeal, consisting of a psychiatric evaluation of the applicant's husband, dated November 21, 2006, by [REDACTED]

In his evaluation, [REDACTED] noted that it was the first visit by the applicant's husband to his office. With respect to the patient's mental status, he concluded that the applicant's husband is experiencing a "Major Depressive Disorder, Single Episode, Severe. No suicidal thoughts or psychotic features." He noted that the applicant's husband also shows a chronic skin rash and loss of weight correlating to the "psychosocial stressor" he identified as the patient's fear of losing his marriage due to his wife's inadmissibility into the United States. Dr. [REDACTED] recommends that the applicant's husband undergo a full physical examination with a general practitioner, and, in the meantime, remain under close observation. He further noted that antidepressant medication may be advisable after the full physical.

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 qualifying relative, her spouse, faces extreme hardship due to the applicant's inadmissibility.

In describing his hardship, the applicant's spouse expressed concern for his wife's safety and well-being while living in Honduras without his support, and he expressed his emotional difficulties living without her. The AAO recognizes that the applicant's spouse has and will continue to experience hardship without the applicant's presence in the United States. However, the record does not demonstrate that the hardship the applicant's spouse suffers due to the applicant's inadmissibility is greater than that typical of individuals separated as a result of removal or inadmissibility, such that it would rise to the level of "extreme hardship." U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (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). 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. "[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).

The AAO acknowledges [REDACTED] comments in his psychiatric evaluation of the applicant's husband. However, although the input of any mental health professional is respected and valuable, the submitted evaluation is based on a single interview between the applicant's spouse and the psychiatrist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized psychological symptoms suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the report's value to a determination of extreme hardship. Further, there is no indication in the record that the applicant's spouse received the further examination, treatment, and medication recommended by [REDACTED] nor is there any indication whether his psychological symptoms continue to exist.

As it stands, the record does not demonstrate how the situation of the applicant's spouse, if he remains in the United States, would surpass the circumstances typical to individuals separated as a result of deportation or exclusion and rise to the level of "extreme hardship."

Finally, as noted above, there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request. However, to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Honduras. The applicant's husband indicated that he would join her in Honduras if he "could afford it," but no evidence has been submitted to support this claim or to demonstrate hardship to the applicant's husband should he relocate to Honduras. As such, the AAO finds that the applicant has failed to establish extreme hardship to her spouse in the event that he relocates to be with her in Honduras.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's 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. legal permanent resident 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 she 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.