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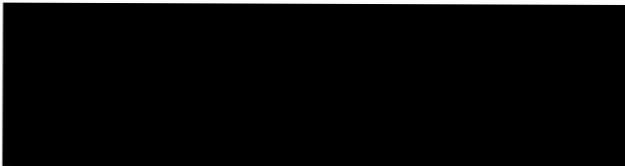
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **MAY 19 2009**

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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.

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 Director, California Service Center, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record shows that the applicant has submitted numerous petitions and applications at various times. The instant decision pertains to the Form I-485, Application for Adjustment of Status, submitted on May 4, 2002 and denied on July 29, 2006; the Form I-130, Petition for Alien Relative, submitted on April 30, 2003 and approved on August 26, 2003; and the Form I-610 waiver application submitted on December 4, 2006 and denied on February 28, 2007.

The record reflects that the applicant is a native and citizen of Ecuador, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition, as was noted above. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

In a decision pertinent to the applicant's Form I-485, the director found that the applicant had been unlawfully present in the United States for one year or more, and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. In the decision pertinent to the waiver application, the director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, the applicant submitted additional evidence. Although the applicant did not appear to contest the director's determination of inadmissibility, the AAO will review that determination.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 applicant's birth certificate shows that he was born on September 3, 1966. The applicant was over 18 years old at all salient times.

On a form G-325A, the applicant stated that he had lived in Corona, New York from March 1989 until he signed that document on April 16, 1996. A marriage certificate dated March 14, 1996 confirms that the applicant was then in the United States.

A previous Form I-130, Petition for Alien Relative, filed by one of the applicant's previous wives, and signed by her on April 16, 1996 states that the applicant last entered the United States on March 17, 1989 without inspection.

A Form I-765, Application for Employment Authorization, which the applicant signed on March 23, 2002, states that the applicant last entered the United States during 1989, entering without inspection near San Diego, California. A Form I-485 Supplement A that the applicant signed on March 26, 2002 indicates that his last entry into the United States was without inspection. The applicant married his present wife on February 13, 2002 in New York, indicating that he was then in the United States.

In a letter dated November 11, 2003 the applicant stated that he was accorded advance parole on April 30, 2003, that he departed the United States on the following Saturday, which was May 3, 2003, and that he returned to the United States on May 11, 2003. A Form I-131 confirms that the applicant applied for a travel document on April 30, 2003 and that the application was approved on the same date. The record contains a Form I-512, Authorization for Parole of Alien into the United States that was issued on April 30, 2003. A Form I-94, Departure Record, indicates that the applicant was paroled into the United States on May 11, 2003, which parole was valid until May 10, 2004.

The record demonstrates that the applicant was unlawfully in the United States beginning on March 17, 1989.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997.

The applicant's unlawful presence in the United States ended on May 4, 2002, when he filed the instant Form I-485. See Memo. from [REDACTED], Exec. Assoc. Commr., Ofc. of Field Oper., Imm. and Natz. Serv., to Reg. Dirs. et al., *Unlawful Presence* HQADN 70/21.1.24-P,

For the purposes of section 212(a)(9)(B)(i) of the Act, then, the applicant was unlawfully present in the United States from April 1, 1997 until May 4, 2002, a period greater than one year. His inadmissibility under that section was triggered when he departed the United States on May 3, 2003. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 a statement dated December 1, 2006 and submitted with the waiver application, the applicant's wife stated that her husband is the economic and moral support of their family and it is important to her that he remain in the United States.

In a letter dated March 10, 2007 and submitted on appeal, the applicant's wife stated that she and the applicant love each other very much, that he makes her very happy, that he pays the bills on time, that he takes her to doctor's appointments as necessary, and that it is very important to her that her husband remain in the United States. Although the applicant's wife stated that she sustained an injury to her left leg at some point, she did not state whether she is now recovered, or the seriousness of the injury. Although she stated that she is 56 years old and characterized herself as a sick person, she did not otherwise characterize her other afflictions or state, let alone provide evidence to demonstrate, the seriousness of those afflictions. The applicant's wife did not assert, let alone demonstrate, that she is unable to go to doctor's appointments without the applicant's help or that no one else is available to assist her.

The record contains copies of the applicant's 1998 and 1999 Form 1040 and Form 1040A, U.S. Individual Income Tax Returns. The applicant earned wages of \$14,100.82 and \$18,191 during those years, respectively. On those returns he claimed his two children, [REDACTED] and [REDACTED], as dependents.

The record contains a copy of a 2000 Form W-2 Wage and Tax Statement that shows that the applicant earned \$5,210.03 during that year. The record contains a printout showing figures ostensibly taken from the applicant's 2000 tax return, which shows that the applicant had wages of \$68,275. The provenance of the additional income is unknown to the AAO.

The record contains the applicant's 2001 W-2 Form. That form indicates that the applicant earned wages of \$70,596.77 during that year.

The record contains the applicant's wife's 2000 and 2001 Form 1040A, U.S. Individual Income Tax Returns. The applicant's wife had total income of \$5,332 and \$9,460 during those years, respectively. On those returns she claimed her two children, [REDACTED] and [REDACTED], as dependents.

The record contains the joint 2002 Form 1040, U.S. Individual Income Tax Return of the applicant and his wife. That document shows that the applicant and his wife had wages of \$84,106 during that year. Attached W-2 forms show that the applicant earned \$69,040 and his wife earned \$15,066. On that return they claimed their four children, [REDACTED] and [REDACTED] as dependents.

The applicant has not submitted evidence showing his or his wife's earnings or expenses since 2002, and the AAO is thus unable to ascertain what hardship, if any, the applicant's removal would have on her.

Further, the applicant's wife reported in her March 10, 2007 letter that her children are now married. The applicant's wife did not discuss where her children now live, or whether they are able to offer her assistance of any kind. The applicant's wife did not discuss whether she has any other relatives living in the United States who could render assistance. The applicant's wife did not discuss whether she has relatives living elsewhere to whom she could go for help. In short, although the applicant's wife stated, "I depend on [the applicant] only," she did not state that no one else is able to assist her.

Further still, the applicant provided no evidence, nor argument, nor even an assertion to demonstrate that his wife is unable to accompany him to Ecuador without experiencing extreme hardship, and the AAO is aware of no reason why this is not feasible.

The remaining hardship factor may be described as emotional hardship. It is the hardship to which the applicant's wife referred when she stated that she and the applicant love each other very much and would miss each other if he were obliged to leave the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

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 spouse faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.