



U.S. Citizenship  
and Immigration  
Services

H4

[REDACTED]

FILE:

[REDACTED]

Office: PANAMA CITY, PANAMA

Date: JAN 24 2005

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

~~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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Panama City, Panama. 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 Venezuela who was found to be inadmissible to the United States pursuant to § 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 readmission within 10 years of her last departure from the United States. The applicant is the daughter of a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States, caring for her U.S. citizen mother.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her mother. The application was denied accordingly. On appeal, the applicant asserts that her mother is ill and requires the applicant's presence in order to care for her daily needs. In support of this contention, the applicant submits two doctors' letters and a statement written by the applicant's brother on behalf of her mother. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa in November 1995, and remained, without extending her period of authorized stay, until April 2004. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her brother. The applicant

accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 2004. The applicant now seeks admission within 10 years of her April 2004 departure from the United States, and she is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 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 lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include 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.

The applicant claims that she has been her mother's primary caregiver, and that her mother will suffer extreme hardship if the applicant is not admitted to the United States. The record reflects that the applicant's mother suffers from bipolar disorder, diabetes, arthritis, and kidney disease. According to a letter written by [REDACTED] applicant's mother requires the presence of a caretaker at all times. The AAO recognizes that the applicant's family may find it problematic securing assistance for her mother, but the record does not reflect that such assistance is unavailable, or that the applicant is the only caregiver who can meet her mother's needs. In addition, the documentation does not establish that the applicant's mother would be unable to procure adequate medical care in Venezuela, should she choose to return to that country in order to reside with the applicant.

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. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.