

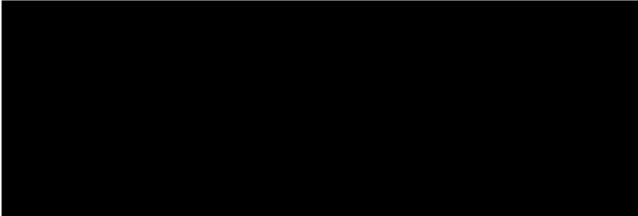
**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



**U.S. Citizenship  
and Immigration  
Services**

H4



FILE:



Office: FRANKFURT, GERMANY

Date: JUL 18 2007

IN RE: Applicant:



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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt, Germany and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who procured entry into the United States without inspection on March 8, 2001. The applicant was subsequently apprehended by the U.S. Border Patrol. Pursuant to the record, the applicant initially provided the border patrol agent with a fraudulent name and country of birth. Further questioning revealed her correct name and country of birth. The applicant was placed in removal proceedings and transferred to a detention facility. The applicant was released on bail on March 21, 2001 to her father's custody. The applicant was scheduled to appear for a hearing on April 25, 2002. Due to a change of venue, the hearing was rescheduled for May 16, 2002. The applicant did not appear and a removal order was issued on May 16, 2002. A Warrant of Removal/Deportation was issued on June 8, 2002.

On July 23, 2004, the applicant married a naturalized U.S. citizen. Form I-130, Petition for Alien Relative, was filed on behalf of the applicant on June 27, 2005, which was subsequently approved on December 12, 2005. Subsequent to her immigrant visa interview on January 11, 2007, the applicant was found inadmissible to the United States under 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. 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 be able to return to the United States with her spouse and children.

The officer in charge concluded that "...The applicant resided unlawfully in the United States for a period of more than 365 days, therefore, making the applicant inadmissible to the United States for a period of ten years...the applicant has failed...in establishing the existence of extreme hardship..." The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Officer in Charge*, dated January 19, 2007.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case. In support of the waiver request, the applicant submits a letter dated February 12, 2007 outlining her reasons for requesting a waiver; reenlistment documents for the applicant's spouse; excerpts from the CIA World Factbook on Honduras; and a notarized affidavit brief from the applicant's spouse, a naturalized U.S. citizen. In addition, an expedite request letter was received by this office on July 5, 2007 from the applicant. The entire record was reviewed and considered in rendering this decision.

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...

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States on March 8, 2001 without inspection. Based on the applicant's executed Form 325A, Biographic Information, the applicant resided in Texas until March 2004. As the applicant resided unlawfully in the United States for more than one year and has sought admission within ten years, she is inadmissible under section 212(a)(9)(B)(II) of the Act. The applicant does not contest the officer in charge's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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 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 United States 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.

To begin, the applicant asserts and documents that the applicant's spouse, a U.S. citizen, is an active duty member of the United States Army. The applicant's spouse reenlisted in March 2006 and his current obligation does not end until 2012. He is a field artillery soldier who recently returned from an extended deployment in Iraq. *Letter in Support of the Appeal of Inadmissibility Ruling*, dated February 12, 2007 and *Letter Requesting Expedited Review*. Due to this obligation to the United States Army, the applicant's spouse states that he "...will be unable to provide the proper parental care, safety, development, or guidance without the presence of their mother [the applicant] in the U.S. Upon this redeployment overseas, my children will be denied the care of their mother or be forced to live with her outside the U.S., ultimately

denying their inalienable rights and privileges as American citizens..." *Letter in Support for Form I-601*, executed by [REDACTED]

The applicant's spouse further asserts that "...my wife [the applicant], currently benefiting from the care of U.S. DOD, would in due course be forced to return to her native country, Honduras. There, the standard of living, opportunities in education, and future employment for her and my children would be devastatingly diminished. Gangs, drugs, unemployment, poverty run rampant in Honduras and I can not stand to see my children or my wife in such an environment." *Id.* at 1.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship the applicant or her children will face cannot be considered, except as it may affect the applicant's spouse.

Based on a thorough review of the record, we have determined that extreme hardship would exist were the applicant's spouse to accompany the applicant to Honduras, based on his active duty status and his obligations to the United States Army until 2012. The nature of his active duty status does not allow the applicant's spouse much freedom in terms of where he resides. Given his military obligations, it would not be feasible for him to accompany the applicant to Honduras; this forced separation would be deemed extreme hardship.

However, the record fails to establish that the applicant's spouse will suffer extreme hardship were his children to accompany the applicant to Honduras while he remains in active duty status with the United States Army. There is no documentation establishing that his financial, emotional or psychological hardship would be any different from other families separated as a result of immigration problems. Information about country conditions in Honduras has been provided, but is general in nature, and does not document what specific negative conditions the applicant and the children would encounter in Honduras which would lead to extreme hardship to the applicant's spouse. For example, the applicant does not explain why she would be unable to be employed in Honduras, thereby providing a safe and prosperous environment for her children, and thus relieving the concerns outlined by the applicant's spouse.

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 will face extreme hardship if the applicant returns to Honduras. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the record does not establish that the financial strain and emotional hardship he would face rise to the level of "extreme" as contemplated by statute and case law.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were unable to return to the

United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Thus, the AAO finds it unnecessary to determine whether the officer in charge erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.