

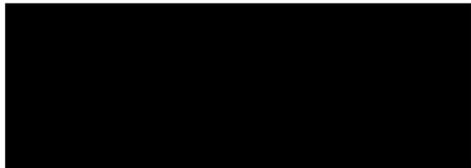


U.S. Citizenship
and Immigration
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FILE: [REDACTED]

Office: TEGUCIGALPA, HONDURAS

Date: MAR 12 2007

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. § 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Tegucigalpa, Honduras, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 readmission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen. 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 reside in the United States with her spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated June 17, 2005.

The record reflects that, in May 2002, the applicant married her spouse, [REDACTED]. On June 19, 2002, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 5, 2004. On September 29, 2004, the applicant appeared at the U.S. Embassy in Managua, Nicaragua. The applicant testified that she had entered the United States without inspection and resided unlawfully in the United States from August 1, 2000, until September 2004, when she returned to Nicaragua. The Form I-601 indicates that the applicant returned to Nicaragua on September 20, 2004. On January 18, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her husband.

On appeal, counsel contends that the applicant's waiver should be granted because it was an abuse of discretion to deny the waiver since a refusal to admit the applicant has caused extreme and unusual hardship to Mr. Preal over and above finances and family separation. *See Applicant's Brief*, dated August 17, 2005. In support of his contentions, counsel submitted the referenced brief, financial documentation for Mr. Preal, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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 officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from August 1, 2000 until September 20, 2004, the date on which she returned to Nicaragua. Counsel does not contest the officer in charge's determination of inadmissibility.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from inadmissibility under 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 herself experiences as a result of inadmissibility is not considered in section 212(a)(9)(B)(v) waiver proceedings.

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. 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).

Since [REDACTED] is not required to live outside the United States as a result of the denial of his wife's waiver request, extreme hardship must be established whether he resides in the United states or in Nicaragua.

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).

[REDACTED] is a native of Haiti who became a lawful permanent resident in 1978 and a naturalized U.S. citizen in 1984. The applicant and [REDACTED] have no children together. The record reflects further that the applicant is in her 40's and [REDACTED] is in his 60's.

Counsel asserts that [REDACTED] will suffer extreme hardship if he remains in the United States without the applicant because 99% of his total income is spent on household costs and costs associated with caring for and visiting the applicant in Nicaragua and the support of his mother. Counsel asserts that all of the expenses are a burden on [REDACTED] and he would have fewer expenses if the applicant were in the United States. Counsel asserts that not only do the trips to see the applicant cost [REDACTED] money, but that he also misses days of work for which he receives no remuneration. Counsel asserts that [REDACTED] is concerned he is not saving any money for his retirement because he is barely capable of paying his bills and supporting the applicant. Counsel asserts that [REDACTED] is suffering extreme hardship because of the geographical prolonged separation between him and the applicant, and because of the financial impact of the applicant's departure from the United States. Counsel asserts that separation from the applicant has seriously affected [REDACTED] physical, mental and emotional health and that there is no question that the applicant and [REDACTED]'s familial relationship is of paramount importance. Counsel asserts that [REDACTED]'s health and wellbeing are being affected due to the fact that violence against women and girls has been a major concern in Nicaragua. Mr. [REDACTED] in his affidavit, states that he will suffer extreme hardship because he will be separated from the applicant. He states that the applicant and he have deep affection for one another and that refusing to admit the applicant to the United States would cause extreme hardship to his health and well-being. He states that it would be extremely hard to impose on him a prolonged and geographically extensive separation from the applicant for whom he has demonstrated deep affection. He states that their familial relationship is of paramount importance and separation as a family unit is certainly a serious matter that requires close and careful scrutiny.

Financial records indicate that, in 2005, [REDACTED]'s yearly salary was approximately \$44,572. While counsel asserts that [REDACTED] is not only incurring the costs of travel to visit the applicant, but also missed days of work for which he is not remunerated, the record reflects that [REDACTED] is provided with annual and sick leave by his employer. As of the period ending July 31, 2005, [REDACTED] had a balance of more than eight weeks worth of annual leave and more than eighteen weeks of sick leave. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to more than exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that [REDACTED] is unable to perform work or daily activities due to a physical or mental illness. The AAO acknowledges that [REDACTED] may have to lower his standard of living, however, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED], even when combined with the emotional hardship described below.

While counsel and [REDACTED] assert that [REDACTED]'s health and well-being have been affected by the separation from the applicant, there is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. The AAO acknowledges there is evidence that there is violence against women in Nicaragua. However, the evidence indicates that this violence is at the hands of the woman's family members and Mr. [REDACTED] has not claimed that the applicant would suffer any violence at the hands of any of her family members. The AAO notes that [REDACTED] has visited the applicant and her family in Nicaragua in the past and the record does not contain any evidence that the applicant has experienced any problems in relation to violence against women. While it is unfortunate that [REDACTED] would experience distress as a result of continued separation from his spouse, this is not a hardship that is beyond those commonly suffered by the families of inadmissible aliens.

Counsel asserts that [REDACTED] would suffer extreme hardship if he were to accompany the applicant to Nicaragua because the prospect of finding work in Nicaragua is minimal, especially for a 60-year old man who has never lived or worked in Nicaragua. Counsel asserts that [REDACTED] cannot retire now because he has no prospective job waiting for him in Nicaragua and has no disposable income or savings to pay his bills and liabilities. Counsel asserts that the political condition in Nicaragua and the prospect of finding employment there is very poor. Counsel asserts that [REDACTED] cannot relocate to Nicaragua because he is working for the government of Miami-Dade County, which has no operations in Nicaragua. Counsel asserts that [REDACTED] is a 60-year old who has virtually no ties to Nicaragua, has lived most of his life in the United States and the lack of employment opportunities and the housing crisis in Nicaragua should be considered. [REDACTED] in his affidavit, states that he has lived and worked in the United States for more than thirty years, has worked for Miami-Dade County for the past twenty years, and that his prospects for employment in Nicaragua are minimal, especially for a 60-year old man who has never lived or worked in Nicaragua. He states that the political condition in Nicaragua and the prospect of finding employment there is very poor. He states that it is not possible for him to relocate to Nicaragua because he is working for Miami-Dade County, which has no operations there.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] will suffer if he were to accompany the applicant to Nicaragua, the AAO finds that they do not constitute extreme hardship. Counsel and [REDACTED] assert that [REDACTED] would find it difficult to obtain employment in Nicaragua. They specifically note that his particular employer does not have any operations in Nicaragua. An inability to pursue a chosen profession is not a hardship that is uncommon to a spouse accompanying an applicant to a foreign country. Counsel states that 22% of the population in Nicaragua is unemployed, 36% are underemployed, but submits no evidence that demonstrates that [REDACTED] would fall within these categories. There is no evidence in the record to establish what the characteristics of these populations are. Accordingly, the record does not demonstrate that [REDACTED] and the applicant would be unable to obtain any employment in Nicaragua and economic detriment of this some type is not unusual or extreme. See *Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. As discussed above, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental condition that could not be treated in Nicaragua. Counsel asserts that the housing rights situation in Nicaragua for the poorer segments of the population is critical. However, there is no evidence in the record to establish the characteristics of the "poorer segments of the population," or whether the applicant and [REDACTED] meet these characteristics. Although counsel states that political conditions in Nicaragua are very poor he does not indicate the particular political problems in Nicaragua that would affect [REDACTED] or provide any documentation to support his statement including evidence of the political situation to which he refers. While the hardships that would be faced by [REDACTED] in relocating to Nicaragua--adjusting to the culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities he would receive in the United States--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Additionally, as previously noted, [REDACTED], as a U.S. citizen, is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, he would not experience extreme hardship if he remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed 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 and a certain amount of 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. 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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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 an 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.