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

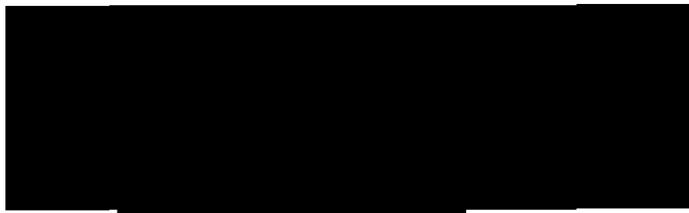


U.S. Citizenship  
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APR 30 2010



FILE:



Office: TEGUCIGALPA, HONDURAS

Date:

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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Honduras 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 ten years of her last departure from the United States. The record indicates that the applicant is the daughter of a naturalized United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen father.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 30, 2007.

On appeal, the applicant's father states that his marriage is ending, and that he is depressed and needs the applicant's support. *Form I-290B*, filed November 27, 2007.

The record includes, but is not limited to, statements from the applicant's father and the applicant's birth certificate. The entire record was reviewed and considered in arriving at 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 [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 case, the record indicates that the applicant entered the United States in September 2003 without inspection. On February 25, 2004, the applicant's father became a United States citizen. On May 25, 2004, the applicant's father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 8, 2005, the applicant's Form I-130 was approved. On April 11, 2005, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 19, 2005, the Director, Missouri Service Center, denied the applicant's Form I-485. On January 22, 2007, the applicant voluntarily departed the United States. On February 8, 2007, the applicant filed a Form I-601. On October 30, 2007, the Field Office Director denied the applicant's Form I-601, finding the applicant to have failed to demonstrate extreme hardship to her United States citizen father.

The applicant accrued unlawful presence from December 20, 2003, the date she turned eighteen years of age, until January 22, 2007, when she departed the United States. The applicant is seeking admission into the United States within ten years of her January 22, 2007 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for a period of more than one year.

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 first upon a showing that the bar imposes an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon removal is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding.<sup>1</sup> 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)

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 *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. The BIA has also 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

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<sup>1</sup> The AAO notes that there are references in the record to the applicant's United States citizen son. The record, however, does not establish, through documentary evidence, that the applicant has any children. Therefore, the AAO will not consider how any hardship that the applicant's son, who is not a qualifying relative, might suffer would affect the applicant's father, the only qualifying relative.

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.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

An applicant must establish that his or her qualifying relative would suffer extreme hardship whether the qualifying relative relocates with the applicant or remains in the United States as a qualifying relative is not required to depart the United States if the applicant’s visa request is denied.

The record does not address what hardship the applicant’s father would experience if he joined the applicant in Honduras. In a letter dated February 8, 2007, the applicant’s father claims that it is impossible for the applicant to live in Honduras because of the gangs. He states that because of the gangs, the applicant cannot study, work, or “even survive.” The AAO notes the applicant’s father’s claim but does not find the record to demonstrate through country conditions reports on gangs in Honduras that the applicant is at risk. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, as previously noted, hardship the applicant experiences as a result of her inadmissibility is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding and the record fails to document how any hardship she may be suffering in Honduras affects her father, the only qualifying relative.

The AAO notes that the applicant's father is a native of Honduras, and it has not been established that he does not speak Spanish or that he has no family ties in Honduras. Additionally, the record fails to contain documentary evidence, e.g., country conditions reports on Honduras, that establishes that the applicant's father would be unable to obtain employment upon relocation. Further, the record does not demonstrate that the applicant's father has no transferable skills that would aid him in obtaining employment in Honduras. The record also fails to indicate that the applicant's father has any medical condition, physical or mental, that would affect his ability to relocate. Accordingly, the AAO finds that the applicant has failed to establish that her father would suffer extreme hardship if he joined her in Honduras.

In addition, the applicant has not established extreme hardship to her father if he remains in the United States. On appeal, the applicant's father states that he is depressed as a result of the break-up of his 14-year marriage and needs the applicant with him. The AAO notes that, other than the applicant's father's statement, the record contains no evidence of an impending divorce, nor any evaluation of his mental/emotional health that establishes he is suffering from depression or the severity of that depression. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* In an affidavit, dated October 6, 2007, the applicant's father states that he has started his own plumbing business and needs the applicant to help him with his business. While the record contains copies of the applicant's father's business tax permit and checks made out to him for plumbing services, it again contains no documentary evidence that demonstrates that the applicant's father requires her assistance to operate his plumbing business. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* The AAO also notes that the applicant's father's affidavit does not indicate with what aspects of his business he requires the applicant's help or what impact her inadmissibility would have on his business. Accordingly, the AAO finds that the applicant has failed to establish that her father would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father 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 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) 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.