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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  
and Immigration  
Services

[Redacted]

HG #2

FILE: [Redacted] Office: TEGUCIGALPA, HONDURAS Date: JUN 01 2010

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:  
[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras. 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 Honduras who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 his last departure from the United States. The applicant is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen child.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated December 1, 2007.

On appeal, the applicant's spouse asserts that her family would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO); Statement from the applicant's spouse*, dated December 19, 2007.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse. 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 case, the record indicates that the applicant entered the United States on April 16, 1996 and returned to Honduras on September 30, 2006. *Consular Memorandum, Embassy of the United States of America, Tegucigalpa, Honduras*, dated February 16, 2007. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States on September 30, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his September 30, 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.<sup>1</sup>

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his child would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Honduras or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

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<sup>1</sup> The AAO observes that the applicant was arrested on March 14, 1998 for forgery and the record does not include a disposition. *Consular Memorandum, Embassy of the United States of America, Tegucigalpa, Honduras*, dated February 16, 2007. Forgery is a crime involving moral turpitude and therefore, the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980).

If the applicant's spouse joins the applicant in Honduras, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of El Salvador. *Naturalization certificate*. The record does not address whether the applicant's spouse has any familial ties to Honduras. The applicant's spouse notes that if she resides in Honduras, she will have a very difficult life. *Statement from the applicant's spouse*, dated December 19, 2007. The AAO notes that conditions in Honduras have warranted the extension of Temporary Protected Status for Honduran nationals through July 5, 2010. As such, the AAO finds that the applicant has demonstrated that his spouse would suffer extreme hardship if she were to reside in Honduras.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of El Salvador. *Naturalization certificate*. The applicant's spouse states that being separated from the applicant has caused her a great deal of mental strain, and it is very difficult for her to cope with her daily chores of working two jobs, arranging child care for her infant, and doing all the housework. *Statement from the applicant's spouse*, dated December 19, 2007. While the AAO acknowledges this statement, it notes that the record fails to include documentation from a licensed healthcare professional regarding the psychological effect that separation is having upon the applicant's spouse. Furthermore, the record does not include documentation regarding the employment of the applicant's spouse, nor is there any information on whether the applicant's spouse has additional family members in the area who could assist her with the responsibilities of caring for her child. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). The record does not address whether a separation from the applicant would financially affect the applicant's spouse. The record does not document the applicant's spouse's financial obligations, e.g., household bills, and mortgage or rent statements. The record does not include tax statements, earnings statements, or W-2 forms showing the income of the applicant's spouse. The record also does not include any documentation to show that the applicant would be unable to contribute to his family's financial well-being from Honduras.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise

to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.