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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**

H6

FILE: [REDACTED] Office: MEXICO CITY (PANAMA), MEXICO

Date:

MAR 06 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:

**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, 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 District Director, Mexico City (Panama), Mexico. 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 Panama 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 applicant is married to a U.S. citizen and has a lawful permanent resident daughter. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated July 18, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated August 13, 2007, counsel states that the applicant's spouse and daughter have suffered extreme hardship in the absence of the applicant. He submits additional evidence of hardship suffered by the applicant's spouse and daughter. Counsel asserts that the waiver requested by the applicant is a discretionary form of relief that requires a balancing of the adverse factors against social and humane considerations. Counsel states that the social and humane considerations in the applicant's case outweigh the adverse factors.

In the present application, the record indicates that the applicant entered the United States without inspection on October 20, 1989. The applicant remained in the United States until May 7, 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until May 7, 2006, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her May 7, 2006 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

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 to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or her child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

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 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.

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). 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 AAO notes that contrary to counsel's statements on appeal, a determination as to whether the applicant warrants the favorable exercise of the Secretary's discretion and a balancing of favorable and unfavorable factors in the applicant's case does not occur unless the applicant first establishes

extreme hardship to her qualifying relative. In accordance with section 212(a)(9)(B)(v) waiver proceedings the applicant's only qualifying relative is her U.S. citizen spouse.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Panama and in the event that he resides in the United States, as he is not required to reside outside of 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.

In a statement, dated August 13, 2007, the applicant's spouse states that everything in his life has changed and become more complicated in the absence of the applicant. He states that he has developed high blood pressure, is now on medication, and his work has been affected. He states that he has been affected financially because the applicant made sure all of their bills were paid on time. He states that he must travel for work and while he is away bills often are paid late resulting in a drastic decrease in his credit score. The applicant's spouse also expresses concern for his daughter. He states that in his wife's absence his relationship with his daughter has suffered. He states that his daughter and wife are very close, and that his daughter has been depressed, has been losing weight, and has struggled academically. He states that he is very concerned for his daughter and that they do not talk much anymore. The record includes a statement from the applicant's daughter in support of the applicant's spouse's statements. The AAO notes that the applicant's spouse does not submit documentation to support his statements regarding his medical condition, his financial difficulties and/or his problems at work. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Furthermore, the applicant's waiver application does not address the hardship the applicant's spouse would suffer if he relocated to Panama to be with the applicant. Thus, the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

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.

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 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) 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.