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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

H6

[redacted]

MAR 10 2010

FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date:

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:

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. 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.

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 June 27, 2007.

On appeal, the applicant asserts that his family will suffer extreme hardship.[1] *Applicant's brief.*

In support of these assertions, counsel submits a brief. The record also includes statements from the applicant's spouse; a statement from the applicant's child; and criminal records for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record includes several documents in the Spanish language unaccompanied by certified translations. As such, the AAO will not review these documents. *See* 8 C.F.R. § 103.2(b)(3).

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.
> >
> > . . . .

[1] The AAO notes that the record contains two Form G-28s, Notices of Entry of Appearance as Attorney or Representative. However, the representation authorized by these Form G-28s is for another individual. Accordingly, the applicant is considered to be self-represented.

> (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 informed the consular officer who conducted his immigrant visa interview that he had entered the United States in 1997 and returned to Honduras on August 8, 2006. *Consular Memorandum, Embassy of the United States, Tegucigalpa, Honduras*, dated January 5, 2007. According to the Form I-130 filed on behalf of the applicant, he entered the United States without inspection in December 1996. *Form I-130, Petition for Alien Relative*. Regardless of when the applicant entered the United States, he remained until August 2006 and is now seeking admission to the United States within ten years of his departure. 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.

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 to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that an applicant or other family members would experience is not directly relevant to the determination as to whether the applicant is eligible for a waiver. Therefore, the only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if he 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.

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 was born Mexico. *Naturalization certificate for the applicant's spouse.* The record does not address how the applicant's spouse would be affected if she were to reside in Honduras. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Honduras. The record does not address employment opportunities for the applicant's spouse in Honduras, nor does the record document, through published country conditions reports, the economic situation in Honduras and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Honduras and, if so, whether she would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse 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 was born in Mexico. *Naturalization certificate for the applicant's spouse.* The applicant's spouse notes that she is financially responsible for her household and that her monthly income does not cover all of her expenses. *Statement from the applicant's spouse*, dated July 20, 2007. While the AAO acknowledges these statements, it notes that the record does not include documentation in support of the applicant's spouse's claim, such as mortgage/bill statements, utility bills, or credit card statements, nor does the record include earnings statements, W-2 forms, or tax statements for the applicant's spouse showing her income. 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)). Furthermore, there is nothing in the record to show that the applicant would be unable to contribute to his family's financial well-being from a location outside the United States.

The applicant's spouse states that being separated from the applicant is causing her emotional and physical stress. *Statement from the applicant's spouse*, dated July 20, 2007. The applicant also asserts that his spouse has developed a great amount of depression and anxiety regarding his return and the ever approaching inevitability of losing their home. *Appeal brief.* The AAO notes that the record does not include documentation from a licensed healthcare professional that establishes how the applicant's spouse's separation from the applicant is affecting her on a physical and/or psychological level. As previously noted, 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 applicant's child states that she spent ten years without seeing the applicant and that this separation was difficult for her childhood. *Statement from the applicant's child*, dated July 20, 2007. If the applicant were to stay in the United States, she asserts, the family's basic needs would be met. *Id.* While the AAO acknowledges these statements, it again notes that an applicant's child is not a qualifying relative for the purposes of section 212(a)(9)(B)(v) waiver proceedings and the record fails to document how any hardship she might encounter would affect the applicant's spouse, the only qualifying relative. The AAO also notes that the record contains no documentation that establishes this individual as the applicant's child. *Matter of Soffici, supra.*

The AAO acknowledges the difficulties that would be faced by the applicant's spouse as a result of his inadmissibility. 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.