

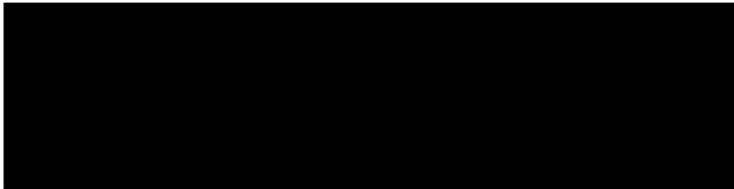
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



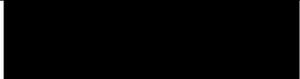
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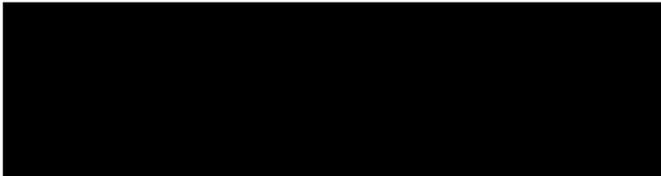
Applicant:



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:



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 District Director, Philadelphia, Pennsylvania, 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 the Dominican Republic 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 his last departure from the United States. The record indicates that the applicant is married to a 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 his United States citizen wife.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 8, 2006.

On appeal, the applicant, through counsel, asserts that his family will suffer hardship if they are separated from him. *Brief attached to Form I-290B*, filed June 6, 2006.

The record includes, but is not limited to, counsel's appeal brief, letters from the applicant's wife and children, a psychological evaluation of the applicant's wife, and tax documents. 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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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 application, the record indicates that the applicant entered the United States in 1985 without inspection. On March 28, 2001, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On or about May 15, 2001, the applicant departed the United States. On June 1, 2001, the applicant reentered the United States on advance parole. On January 20, 2002, the applicant again departed the United States. On February 10, 2002, the applicant reentered the United States on advance parole. On April 19, 2006, the applicant filed a Form I-601. On May 3, 2006, the applicant's Form I-130 was approved. On May 8, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding that the applicant had failed to demonstrate extreme hardship to his United States citizen wife.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for the purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al., dated May 6, 2009.* The record indicates that the applicant filed his Form I-485 on March 28, 2001. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until March 28, 2001, when he filed the Form I-485. 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 and seeking admission within ten years of his 2002 departure.

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 would result in extreme hardship for the citizen or lawfully resident spouse or parent of the applicant. Hardship an applicant experiences upon removal is not directly relevant to a determination of extreme hardship in a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's sons and stepdaughter would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's sons and stepdaughter is not considered in section 212(a)(9)(B) waiver proceedings except to the extent that it creates hardship for a qualifying relative. Moreover, in the present case, the record does not establish, through documentary evidence, that the applicant has children. 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 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).

Extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record does not address what specific hardships the applicant's wife would experience if she joined the applicant in the Dominican Republic. Counsel states that the applicant's wife has always lived in the United States. However, the AAO notes that the record does not indicate that the applicant's wife does not speak Spanish or that she has no family ties in the Dominican Republic. The record also fails to demonstrate that the applicant's wife would be unable to obtain employment upon relocation. Accordingly, while the AAO acknowledges that the applicant's wife is a native and citizen of the United States and may experience hardship in relocating to the Dominican Republic, it finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated with him to the Dominican Republic.

The applicant has also failed to establish that his wife would experience extreme hardship if she remains in the United States. In a letter dated May 23, 2006, the applicant's wife states that she loves the applicant and that he is the best thing that ever happened to her. She claims that she does not know what she would do without him, as he has given her a sense of protection. In a psychological evaluation of the applicant's wife, [REDACTED] finds her to have a number of symptoms consistent with Attention Deficit/Hyperactivity Disorder and to also suffer from Dependent Personality Disorder. *Psychological Evaluation*, dated March 17, 2006. [REDACTED] states that the applicant's wife is "very dependent upon [the applicant], her mother, and other people in her life to take care of her." [REDACTED] states the applicant's wife "would experience intense anxiety" if she were to be separated from the applicant and would be "plunged into a state of poverty." Additionally, [REDACTED] states that because of her dependent style, the applicant's wife may "attempt to become involved in another relationship" if she is separated from the applicant.

Although the input of any mental health professional is respected and valuable, the AAO observes that the submitted assessment by [REDACTED] is based on a single interview with the applicant's wife. In that the conclusions reached in the submitted assessment are based solely on this interview, the AAO does not find them to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing their value to a determination of extreme hardship.

[REDACTED] also indicates that he interviewed the applicant's two sons from a previous relationship and notes that they would be deprived of a father if the applicant were to be removed. [REDACTED] further asserts that the applicant is a father figure to his spouse's daughter. [REDACTED] states that there is ample evidence that the absence of a father in a child's life leaves that child more vulnerable to future academic, employment and legal difficulties, as well as substance abuse. The AAO acknowledges [REDACTED] statements, but notes that the applicant's children are not qualifying relatives for the purposes of this proceeding and that the record does not demonstrate how any hardship they would experience as a result of the applicant's removal would result in hardship to his wife, the only qualifying relative. The AAO also observes that, as previously indicated, the record contains no documentary evidence, e.g.,

birth certificates, which establishes the applicant has two sons or that his wife has a daughter. 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)).

In his evaluation, [REDACTED] indicates that the applicant's wife is a stay-at-home mother and that she has health insurance for her daughter through the State of Pennsylvania and receives some supplementary income through the Department of Public Welfare. He states that even if the applicant's wife were able to obtain employment, her lack of education and work experience would make it difficult for her to earn enough to support a household. The AAO acknowledges the information provided by [REDACTED] but does not find the record to establish that the applicant's wife has no skills that would allow her to obtain employment in the applicant's absence. It also notes that the applicant's wife has close family members living near her who have consistently assisted her in the past and the record does not indicate that they are unable or unwilling to continue their support. Accordingly, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she 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 wife 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 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.