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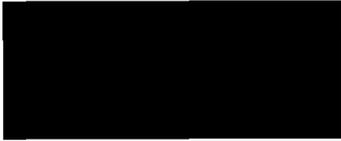
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: DEC 29 2011 Office: TAMPA, FLORIDA

FILE:

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:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 his last departure from the United States. The applicant is married to a United States citizen and is the father of two United States citizen children and a United States citizen stepchild. He is 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 spouse and children.

The District 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 12, 2009.

On appeal, the applicant, through counsel, contends that the District Director erred in denying the applicant's waiver application. *See Form I-290B*, dated July 14, 2009. Counsel claims that the applicant's wife suffers from numerous medical conditions and relies on the applicant and his health insurance to manage her medical issues. *See id.*

The record includes, but is not limited to, statements from counsel, the applicant, and his wife; letters of support for the applicant and his wife; medical documentation for the applicant's wife and children; school records for the applicant's children; individual education plans for the applicant's children; household and utility bills, mortgage documents, tax documents, and insurance documents; pay stubs and employment verifications for the applicant and his wife; money transfer receipts; and country conditions documents on Honduras. 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 reflects that the applicant entered the United States on January 8, 1998 without inspection. On January 21, 1999, the applicant applied for Temporary Protected Status (TPS). On August 18, 1999, the applicant was granted TPS status as a Honduran national. In December 2003, the applicant departed the United States. On January 3, 2004, the applicant was paroled into the United States.

The applicant accrued more than one year of unlawful presence from January 8, 1998, the date he entered the United States without inspection, until January 21, 1999, the date he applied for TPS. The applicant's departure from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant is seeking admission into the United States within ten years of his December 2003 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 and seeking admission within 10 years of his departure.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, his children, or his stepchild can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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. *Id.* The Board added that not all of the foregoing

factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In a statement dated August 11, 2009, counsel states the applicant's wife suffers from "several physical conditions," including "Scoliosis Idiopathic, if which is left untreated or not properly treated can have devastating affects [sic]." In an undated statement, the applicant's wife states she sees a chiropractor two times a week. In a statement dated April 5, 2009, [REDACTED] states the applicant's wife suffers from spinal issues, which include cervical brachial syndrome and idiopathic scoliosis. [REDACTED] indicates that if the applicant's wife "does not undergo proper treatment the spinal conditions

that noted will continue to progressively worsen and the conditions will continue to affect her activities of daily living and her health.” The applicant’s wife states she sees a neurologist who prescribes her pain medication. The AAO notes that the record establishes that the applicant’s wife has been prescribed two pain medications, Meloxicam and Cyclobenzaprine. Additionally, the AAO notes that record does not contain any documentary evidence establishing that the applicant’s wife cannot receive treatment for her medical conditions in Honduras, that she has to remain in the United States to receive treatment, or that her medical conditions would affect her ability to relocate. However, the AAO notes the medical issues of the applicant’s wife.

The applicant’s wife states her children do not “read or write in Spanish and two have learning disabilities.” The AAO notes that the record establishes that the applicant’s stepson, [REDACTED] has Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, and dyslexia. *See statement from [REDACTED] dated July 2, 2009.* Additionally, the record establishes that the applicant’s son, [REDACTED] has a speech delay, and receives speech therapy. *See statement from [REDACTED], dated July 1, 2009.* In a statement dated August 9, 2007, the applicant’s previous counsel states the applicant’s son, [REDACTED] and stepson, will suffer in Honduras because there are not “adequate facilities to address [their] medical needs.” The applicant’s wife states that the “level of education provided by the public schools in Honduras, are way beneath those of the USA.” Additionally, she states her “eldest son’s father is currently incarcerated and would refuse to allow [her] son [REDACTED] to permanently live with [her] in Honduras.” Further, the applicant’s wife states that her son, [REDACTED] “had a terrible asthma attack” when they went to Honduras in December 2003. In a statement dated July 15, 2009, Honduran [REDACTED] states that in December 2003, the applicant’s son, [REDACTED] was “diagnosed in crisis moderate bronchial asthma associated with environmental factors.” The AAO acknowledges that the applicant’s children may suffer some hardship in residing in Honduras; however, the AAO notes that the applicant’s children are not qualifying relatives, and the applicant has not shown that his children will experience challenges that elevate his wife’s difficulty to an extreme hardship. However, the AAO notes the concerns for the applicant’s children.

The applicant’s wife states all of her family is in Tampa and she sees “them frequently.” In a statement dated May 16, 2006, the applicant’s wife states she has no ties to Honduras. Additionally, she states they are “extremely active in [their] church.” The applicant’s wife states with her job she is required to attend trainings and to renew her license. She claims that she would like to pursue more educational opportunities, but in Honduras, she would “be abandoning [her] educational goals and aspirations.” She claims that in Honduras, their “combined incomes will not even be ½ of what [she] currently make[s].” Additionally, she states that the applicant’s parents rely on the financial assistance they provide to them. The AAO notes that Honduras was initially designated for Temporary Protected Status (TPS) on January 5, 1999 and that status has been extended through July 5, 2013. The AAO further notes that in determining extensions for TPS for Hondurans, the Department of Homeland Security (DHS) and the Department of State (DOS) review conditions in Honduras. DHS and DOS have determined that there continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from environmental disasters. Additionally, Honduras is unable, temporarily, to adequately handle the return of its nationals. 8 U.S.C. § 1245(b)(1)(B)(i-iii). The AAO notes the applicant’s wife’s concerns regarding the difficulties she would face in relocating to Honduras.

The AAO acknowledges that the applicant's wife is a native of Puerto Rico and a citizen of the United States, and that she may experience some hardship in relocating to Honduras. Based on the country conditions in Honduras; the applicant's spouse's lack of ties to Honduras; her separation from her family in the United States, including her son; having to raise her children in Honduras; her medical issues; disruption of her medical treatment; and her employment issues; the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Honduras.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, counsel states the applicant's wife depends on the applicant for "medical insurance, family support and financial support." The applicant's wife states she has "been diagnosed with Cervicobrachial Syndrome, Segmental Dysfunction of the Cervical Region: C1-C7, Scoliosis Idiopathic and Muscle Spasms, since 2005." As noted above, [REDACTED] states the applicant's wife suffers from spinal issues, which include cervical brachial syndrome and idiopathic scoliosis. In a statement dated July 25, 2007, [REDACTED] states the applicant's wife has suffered from her neck and back issues since 2005. The AAO notes the applicant's wife's medical issues.

The applicant's wife states her son, [REDACTED] and the applicant "have a very loving father and son" relationship. She states that she and her children rely on the applicant's medical insurance, and without it she "would be unable to provide [her] children with the proper medical care." She also states her "children require routine medical visits because of their medical conditions." The applicant's wife states her son, [REDACTED] has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and he is currently on medication. She also claims that he has learning disabilities and dyslexia. As noted above, Dr. Torres states the applicant's stepson, [REDACTED] has Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, and dyslexia. Additionally, [REDACTED] states that the applicant's stepson is being seen by a neurologist who prescribed him Adderall for the ADHD. In an undated statement, [REDACTED] indicates that the applicant's stepson has a learning disability and will "be starting a special class to maximize his learning potential." The AAO notes that the record establishes that the applicant's stepson is on an individual educational plan. *See Individual Educational Plan*, dated April 17, 2007. The applicant's wife states her son, [REDACTED] "contracted the RSV Virus" six weeks after his birth, and he developed "severe asthma symptoms." She states that his asthma "is currently under control." In a statement dated July 24, 2009, [REDACTED] states the applicant's son, [REDACTED] has a "history of Asthma, for which he used to receive Albuterol nebulizations." [REDACTED] states the applicant's son's asthma is currently under control, but he had an attack in April 2005. The applicant's wife states her son, [REDACTED] "was diagnosed with Learning Disabilities and is currently participating in Speech Therapy." She also states that he "has a history of Asthma and Eczema." In a statement dated July 1, 2009, [REDACTED] states the applicant's son, [REDACTED] has a speech delay and a history of asthma. [REDACTED] states the applicant's son "receives Speech Therapy twice a week. [He] needs to continue Speech Therapy in order to improve his communication skills." The AAO notes that the record establishes that the applicant's son is on an individual educational plan. *See Individual Educational Plan*, dated November 13, 2008. The AAO notes the concerns for the applicant's children.

The applicant's wife states she gets "the chills, just the mere thought of such tragedy, that could occur, if [the applicant] is sent back to Honduras." She claims that before she met the applicant, she was involved in a relationship with "severe domestic violence issues," so "[i]t was difficult for [her] to believe and trust another man all over again." Additionally, she states her "net monthly income is approximately \$1400.00" and her "average monthly home expenses are \$2,000.00." The applicant's wife states the applicant's "average monthly net earnings are \$2400.00." She claims that she could not "possibly make it on [her] own with...three kids." While the AAO notes the applicant's wife's claims of financial hardship, it does not find the record to support them. The AAO finds the record to include some documentation of the applicant and his wife's income and expenses; however, this material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the AAO notes that the applicant has submitted no evidence to establish that he would be unable to obtain employment in Honduras and, thereby, reduce the financial burden on his wife. However, even though the record fails to establish that the applicant's spouse is unable to meet her financial obligations, the AAO notes the applicant's wife's financial concerns.

The AAO finds that when the applicant's wife's medical, emotional, and financial issues are considered in combination with the normal hardships that result from the exclusion of a loved one, the applicant has established that his wife would experience extreme hardship if she remained in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's entry without inspection, unauthorized employment, and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen wife, children, and stepson; the extreme hardship to his wife if he were refused admission; the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.