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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 29 2003

FILE [redacted] Office: MADRID, SPAIN Date:

IN RE: Applicant: [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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Madrid, Spain. The matter 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 Spain. The applicant 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. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The officer in charge (OIC) found that the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *See OIC Decision,* dated March 25, 2003.

On appeal, the applicant, through his wife (Mrs. [redacted] asserts that she will suffer extreme hardship if the applicant's waiver application is not granted. Mrs. [redacted] asserts that she has attempted to reside with her husband in Spain, but that she misses her family and feels unhappy and lonely in Spain. Mrs. [redacted] additionally asserts that she will be unable to continue her photography career goals in Spain. It is noted that the record also contains two letters written by the applicant. The letters are written in Spanish, however, and no certified translation is contained in the record. The applicant's untranslated letters will therefore not be considered by the AAO. *See* 8 C.F.R. § 103.2(b)(3).

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (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 [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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed to be relevant in determining whether an alien had established extreme hardship for purposes of a waiver of inadmissibility. These factors included 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.

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 did not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In support of his appeal, the applicant submitted two letters written by Mrs. [redacted] stating that she is lonely

and depressed in Spain and that she wants to reside in the U.S. because her family is there and career opportunities in photography are more numerous.

Based on the evidence in the record, it appears that Mrs. [redacted] is a 24-year-old woman who lived in Spain during her childhood and who speaks Spanish fluently. The record contains no details or evidence to indicate that Mrs. [redacted] had a stable career in the U.S. or that she would be unable to obtain employment in Spain. Moreover, Mrs. [redacted] has no physical health concerns, and the record contains no medical or independent evidence to indicate that her unhappiness and loneliness are beyond that normally suffered upon deportation or exclusion of a family member.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if his waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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.