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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

PUBLIC COPY

[redacted]

MAY 12 2003

FILE: [redacted] Office: MIAMI, FLORIDA 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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

MAY1203_02H4212

DISCUSSION: The waiver application was denied by the District Director, Miami Florida. 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 Uruguay. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States. The record reflects that the applicant entered the United States (U.S.) as a nonimmigrant visitor on January 9, 1997, and that she was authorized to stay in the U.S. until July 8, 1997. The applicant attempted to re-enter the U.S. on May 2, 2000. At that time it was determined that she was removable pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act, as an alien who was present in the United States in violation of the Act or any other law of the United States. The applicant voluntarily returned to Uruguay and re-entered the U.S. pursuant to the visa waiver pilot program on July 4, 2000. The record reflects that the applicant was unlawfully present in the U.S. for a period of more than 180 days, but less than one year. The applicant married a U.S. citizen in Miami, Florida on August 29, 2000, and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *See District Director Decision,* dated May 7, 2002.

On appeal, counsel asserts that:

1. The applicant has made a case for extreme hardship based upon family ties in the United States.
2. The alien has strongly embraced herself in the social and cultural life in the United States and any attempt at readjustment back to her home country will cause a severe emotional and psychological impact.

Counsel requested an additional 120 days to submit a brief and/or evidence to the AAO, however, no additional information or evidence has been submitted.

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

(i) [A]ny 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 . . . and again seeks admission within 3 years of the date of such alien's departure or removal [is inadmissible]

. . . .

(v) Waiver. - The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Counsel states in the notice of appeal that the applicant will suffer emotional and psychological hardship if she is not granted a waiver of inadmissibility. As noted above, however, a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent upon a showing that the bar imposes an extreme hardship to the alien's citizen or lawfully resident spouse or parent. The waiver specifically does not include extreme hardship to the alien herself. Therefore, the claimed hardship to the applicant will not be considered.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien has established extreme hardship. These 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. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's husband, Mr. [redacted] states in an affidavit submitted to the district director, that the applicant is the love of his life and that he relies on her for all of his emotional support and motivation. Mr. [redacted] does not describe how he relies on the applicant for emotional support or motivation, nor does he offer evidence or details to indicate the consequences he would suffer if his wife were removed from the United States. No other information or evidence was submitted to establish that the applicant's husband would suffer extreme hardship if the applicant's waiver of inadmissibility were not granted.

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). *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 emphasized that the common results of deportation are insufficient to prove extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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.