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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]

MAY 12 2003

FILE: [redacted] Office: PANAMA 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.

Terry L. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Panama. 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 Colombia. 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. The record reflects that the applicant entered the United States (U.S.) as a nonimmigrant visitor on January 14, 1999, and that she remained beyond her authorized stay and was unlawfully present in the U.S. for one year or more. The applicant voluntarily departed the United States on October 23, 2001. The applicant married a U.S. citizen in Bogota, Colombia, on May 30, 2002, 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 Officer in Charge (OIC) 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 Officer in Charge Decision,* dated October 8, 2002.

On appeal, the applicant, through her husband [redacted] asserts that Mr. [redacted] will suffer extreme emotional hardship if the applicant is not granted a waiver of inadmissibility, and that new evidence proving hardship will be submitted within 30 days. *See Notice of Appeal,* dated November 13, 2002. No new evidence was submitted.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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> (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.
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> . . . .
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> (ii) Construction of unlawful presence. - . . . [a]n alien is deemed to be unlawfully present in

> the United States if the alien is present in the United States after the expiration of the period of stay authorized . . .
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> . . . .
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> (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.

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 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. *See Cervantes-Gonzalez* at 565-566.

The BIA noted in *Cervantes-Gonzalez* that the alien's wife knew her husband was in deportation proceedings at the time they were married. The BIA found the fact that the alien's wife knew at the time of their marriage, that she might have to face a decision of parting from her husband or following him to his country if he was ordered deported, was a factor that undermined the alien's extreme hardship argument. *Id.*

In this case, the applicant asserts that her husband will be depressed and suffer emotional hardship if she is unable to join him in the United States. In support of this assertion, the applicant submitted two affidavits from her husband stating that he misses his wife and feels depressed at her not being with him, and that he wants to build a life with his wife in the United States. *See Affidavits of Oscar Vaca,* dated June 26, 2002. No other hardship was asserted. Moreover, it is noted that Mr [redacted] married the applicant in Colombia on May 30, 2002, and that the couple filed an I-130

Petition for Alien Relative the same day at the U.S. Embassy in Bogota, Colombia. It thus appears that Mr [redacted] knew when he got married that he might have to face the decision of living apart from his wife or joining her in Colombia if her request for U.S. residency was 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 does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show 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 under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.