

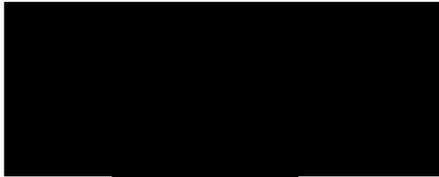
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3



FILE: [REDACTED] Office: JACKSONVILLE, FL Date: SEP 20 2007

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Jacksonville, Florida, 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 Trinidad. The applicant initially entered the United States without inspection in December 1990. She subsequently departed and reentered the United States with advance parole authorization on February 18, 2002. 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 seeks a waiver of inadmissibility in order to remain with her naturalized U.S. citizen spouse and children in the United States.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 3, 2005.

In support of the appeal, counsel submits a brief, dated November 1, 2005; a copy of a November 26, 1997, Memorandum, "Advance Parole for Alien Unlawfully Present in the United States for More than 180 Days", by Paul Virtue, Acting Executive Associate Commissioner (Memo); a copy of the applicant's advance parole authorization, issued on February 11, 2002; copies of the December 16, 1991 and October 26, 2005 Form I-131 instructions; copies of the applicant's spouse's and two children's naturalization certificates; a photograph of the applicant's family; notarized statements from the applicant's spouse and her two children in support of the waiver request; a copy of the Consular Information Sheet for Trinidad and Tobago, issued by the U.S. Department of State; excerpts from the U.S. Department of State's Report on Human Rights Practices for Trinidad and Tobago; copies of articles from The Trinidad Guardian related to criminal activity in Trinidad; a letter from the applicant's spouse's physician confirming his medical condition, dated October 20, 2005; a letter from the applicant's son's physician confirming his medical condition, dated October 20, 2005 and bills for his treatment; excerpts from the MDtravelhealth.com website regarding medical issues in Trinidad; and copies of pay stubs, tax returns and billing statements for amounts owed by the applicant and her family. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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 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...

To begin, counsel asserts on appeal that pursuant to a November 26, 1997 Immigration and Naturalization Service (now Citizenship and Immigration Services, CIS) memorandum, the applicant should not have been granted advanced parole. As stated by counsel, the applicant "...was not aware that she was not eligible to receive travel permission due to her having entered [the United States] without inspection, and her subsequent accrual of unlawful presence, nor did the I-131 instructions contain the travel warning that is provided in the current version of the form...Because the USCIS had issued the travel document, [redacted] [the applicant] trusted that it was acceptable for her to travel, and departed the United States to attend her mother's funeral. She re-entered the United States with the Advance Parole document four days after her departure, unaware that she had subjected herself to the bar..." *Brief in Support*, dated November 1, 2005.

The AAO finds that the November 26, 1997, Memorandum, "Advance Parole for Aliens Unlawfully Present in the United States for More than 180 Days" [redacted], Acting Executive Associate Commissioner (Memo) referred to by counsel, made clear that a Service grant of advance parole status did not confer any waiver of inadmissibility benefits upon the alien. The memo further clarified that an alien who became inadmissible due to his or her departure from the United States had to file an I-601, Application for a Waiver of Excludability, and upon adjudication of that waiver, had to establish extreme hardship to a qualifying relative, in accordance with applicable legal standards. In addition, the memo clarified that aliens granted advanced parole would also receive a written warning regarding the possible harsh consequences of departing the United States, to ensure that they were aware of the risks of departure. The records indicate that the applicant was given a written warning, on the advance parole document issued to her on February 11, 2002, of the consequences of departing the United States.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

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).

The record contains several references to the hardship that the applicant's children would suffer if the applicant's waiver of inadmissibility is not granted. As stated by the applicant's spouse, the applicant provides "...financial support, which is very important since one child has just graduated from college and the other is still attending college...There is no way I could support my children and pay our mortgage without my wife's [the applicant's] financial assistance [redacted] [the applicant's son] has been involved in two automobile accidents over the past year. He suffered back and neck injuries, so he sees a physical therapist twice each week. [redacted] as no medical insurance, so my wife's income helps to pay the medical bills..." *Notarized Statement from [redacted]* dated October 27, 2005.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their children, ages 21 and 19 at the time the appeal was filed, cannot be considered, except as it may affect the applicant's spouse. Although the AAO recognizes that the applicant's children may need to make alternate arrangements with respect to their financial, physical, scholastic and emotional care were the applicant removed, it has not been established that such alternate arrangements would cause the applicant's spouse extreme hardship.

Counsel further asserts that the applicant's spouse would experience emotional hardship were the applicant removed from the United States. As stated by the applicant's spouse "...As a family, we are very close... [the applicant] is very important to the success of our loving family, as she provides great moral support to all of us. Despite all the issues she has had with her immigration status, she continues to be an outstanding mother and wife. She is dedicated to the well-being of the family and has always put our family above all else...the stress of having my wife taken away would be unbearable for me..." *Id.* at 1. There is no documentation establishing that the applicant's spouse's emotional or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding his mental state, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's immigration situation. Finally, it has not been established that it would be an extreme hardship for the applicant's spouse to visit the applicant, whether in Trinidad or in any other country to which the applicant relocates, on a regular basis, were she removed from the United States.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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 does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Moreover, counsel states that the applicant's spouse will suffer financial hardship if the applicant were removed from the United States. As stated by counsel, the applicant "...has been employed as an Analyst for Bank of America for more than ten years, and she is currently earning a salary of \$30,000 per year. This income serves as nearly half of the household earnings. Without her income, the family would not be able to meet its financial obligations...Without [redacted]s [the applicant's] income, [redacted] [the applicant's spouse] would not have the ability to support a household with two children and ongoing medical bills...Should [redacted] return to Trinidad, the family would also have the expense of supporting a second household in Trinidad..." *Brief in Support*, at 2.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the applicant's spouse may need to make alternate arrangements with respect to his employment and housing situation, it has not been established that such arrangements would cause him extreme hardship. In addition, it has not been established that the applicant's adult children would be unable to work while attending school, thereby assisting with the finances of the household. Moreover, counsel provides no evidence to substantiate that the applicant would not be able to assume a similar position, relatively comparable in pay and responsibilities were she to relocate to Trinidad, or any other country of her choosing, thereby assisting the applicant's spouse with the household expenses. Although counsel provides articles regarding country conditions in Trinidad, the articles are general in nature and do not specifically correlate to the applicant's profession and personal situation were she to relocate to Trinidad. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel further contends that the applicant's spouse suffers from hypertension. As the applicant's spouse states, "...I suffer from high blood pressure...Not only does my wife help me with my medical needs, but she also takes care of things around the house. The stress of having my wife taken away would be unbearable for me. My doctor has instructed me to reduce my overall stress levels, as this could elevate my blood pressure and put me at risk for serious heart-related problems, such as heart attack or stroke..." *Supra* at 1. The letter from the applicant's spouse's physician states that the applicant currently takes medication to stabilize his blood pressure. *Letter from [REDACTED] DO*, dated October 20, 2005. No objective evidence is provided that details the severity of the applicant's spouse's medical situation, and the impact the applicant's removal would have on the applicant's spouse's continuing treatment. Moreover, the applicant's spouse is employed full-time; his medical condition clearly does not hinder his ability to work and help support his family.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, the applicant's spouse states that "...based upon some of the recent events taking place in Trinidad...it is not a safe place..." *Supra* at 1. Counsel has provided articles about country conditions and criminal activity in Trinidad. The information provided by counsel is general in nature and does not specifically establish that the applicant's spouse, born in Trinidad, would be in danger were he to relocate to Trinidad. Moreover, it has not been established that the applicant and her spouse would be unable to obtain employment in Trinidad that would provide them with medical coverage so that the applicant's spouse may continue his medical treatment for hypertension. Finally, counsel references the emotional hardship that the applicant's spouse would suffer were he to relocate to Trinidad while his children remain in the United States. It has not been established that the applicant's children, both over 18 years of age at the time the appeal was filed, would not be able to visit their parents in Trinidad regularly, nor has it been established that the applicant's spouse would be unable to visit his children in the United States on a regular basis, based on his status as a naturalized U.S. citizen.

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 if she were removed from the United States. 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)(v) of the Act, 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.