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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAR 20 2008

IN RE:



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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Grenada 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 naturalized U.S. citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their two children.

The Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Director*, dated March 5, 2007.

On appeal, the applicant asserts that he has demonstrated that his qualifying relative would suffer extreme hardship if he were removed from the United States. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, copies of the applicant's health insurance cards; W-2 Forms for the applicant and his spouse; tax statements for the applicant and his spouse; and an employment letter for the applicant. The entire record was reviewed and considered in rendering 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 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 the present application, the record indicates that the applicant was admitted to the United States on October 15, 1991 with a B-2 visa valid until April 14, 1992. *Form I-94*. The applicant remained in the United States until November 5, 2000. *Form I-601, Application for Waiver of Ground of Excludability*. The applicant filed his initial Form I-485, Application to Register Permanent Residence or Adjust Status on October 6, 1998. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 6, 1998, the date he filed the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his November 5, 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself or his children would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Grenada or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case. Counsel asserts that when the applicant filed the Form I-601, Application for Waiver of Ground of Excludability, he was unaware that he had to provide supporting documentation to establish extreme hardship. *Attorney's brief*. Counsel requests that the appeal be granted so that the applicant can submit the Form I-601 with the necessary documentation. *Id.* The AAO notes that on appeal, the applicant has been afforded the opportunity to submit additional documentation and that he has not taken advantage of this opportunity.

If the applicant's spouse travels with the applicant to Grenada, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Grenada. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The record does not address what family members, if any, the applicant's spouse may have in Grenada. Counsel asserts that if the applicant's spouse and her two children were to accompany the applicant to Grenada, the children would suffer as they are not familiar with the customs, educational, or medical systems there. *Attorney's brief*. **Specifically, counsel states that the applicant's son would not receive the proper medical care for his asthmatic condition.** *Id.* The AAO notes that the applicant's children are not qualifying relatives in this particular case, and while the effect of a child's suffering upon a qualifying relative will be considered, there is nothing in the record that addresses how the hardship experienced by the applicant's children as a result of relocation would affect the applicant's spouse. Furthermore, there is nothing in the record from a licensed health professional to document the medical condition of the applicant's child. The AAO acknowledges the assertions made by counsel, however, it notes that the record fails to include any documentary evidence to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Grenada.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The parents of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. Counsel states that the applicant, through his full-time employment in the United States, receives health insurance coverage which extends to his spouse and two children. *Attorney's brief; See also health insurance card for the applicant*. If the applicant returned to Grenada, his family would lose their health insurance benefits and his asthmatic son would be unable to maintain his current level of health care. *Attorney's brief*. Counsel also asserts that the applicant's spouse is suffering from severe psychological distress. *Id.* While the AAO acknowledges counsel's assertions, it notes that there is nothing in the record to demonstrate that the applicant would be unable to obtain health insurance coverage in Grenada. As previously noted, the record fails to document the medical condition of the applicant's child from a licensed health professional and how any condition of the applicant's child would affect the applicant's spouse, the only qualifying relative in this case. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel further notes that the applicant's spouse is unable to financially support her family solely on her employment. *Attorney's brief*. The AAO notes that there is nothing in the record to demonstrate that the applicant would be unable to contribute to his family's financial well-being from Grenada. Counsel asserts that the applicant's spouse and her two children would not be financially capable of visiting the applicant in Grenada on a regular basis. *Attorney's brief*. The record fails to document the expenses, such as airfare cost, associated with visiting Grenada. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)).

The applicant's spouse states that the applicant is a loving, caring, and compassionate husband and father and that she cannot see herself or their children without him. *Statement from the applicant's spouse*, dated August 19, 2005. While the AAO acknowledges these emotions, 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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* 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.