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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **NOV 25 2008**

IN RE: Applicant: 

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:



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.


for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 the Dominican Republic 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen wife and son.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated June 27, 2006.

On appeal, counsel asserts that the Director "erred in denying [the applicant's waiver]. The [Director] erred in finding that [the applicant's] wife would not suffer extreme hardship were applicant forced to leave the U.S. or if his wife has to follow him and take the children along. The [Director] also erred in not considering that the hardships to the children will have a direct effect on [the applicant's] wife. Finally, the [Director] erred in not analyzing in the aggregate all the evidence presented by [the applicant] in support of his Waiver application." *Attachment to Form I-290B*, filed June 27, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and his wife, a letter from [redacted] regarding the applicant's stepdaughter's medical condition, and a psychological evaluation on the applicant's wife. The entire record was reviewed and considered in arriving at 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.

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is available solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on July 21, 1994, the applicant entered the United States without inspection. On February 26, 2001, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On April 28, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On July 20, 2001, the applicant's Form I-130 was approved. In August 2002, the applicant departed the United States pursuant to advance parole. On September 2, 2002, the applicant reentered the United States. On October 27, 2004, the District Director, New York City, New York, denied the applicant's Form I-485. On November 26, 2004, the applicant, through counsel, filed a motion to reopen the District Director's denial of the Form I-485. On the same day, the applicant filed a Form I-601. On June 6, 2006, the Director, California Service Center, reopened the applicant's Form I-485. On June 27, 2006, the Director denied the Form I-485 and Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until August 2002, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his August 2002 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 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. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Once 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).

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.

Counsel claims that the applicant's wife would face extreme hardship if the applicant were removed to the Dominican Republic. *See Appeal Brief*, filed August 25, 2006. The applicant's wife states she has "been suffering emotional hardship because of the possibility of a physical separation." *Affidavit of [REDACTED] dated August 23, 2006.* [REDACTED] diagnosed the applicant's wife with adjustment disorder with mixed anxiety and depressed mood. *See psychological evaluation by [REDACTED]*, dated July 19, 2006. Dr. [REDACTED] further states that the applicant's wife "has experienced suicidal ideation, but has not thought of specific ways she would kill herself. . . . She has not made any suicide gestures." *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's wife and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's wife states it would be difficult to raise her children without the applicant. *Affidavit of [REDACTED] supra.* The applicant's wife states her daughter suffers from asthma. *Id; see also letter from [REDACTED] M.D., The Brookdale University Hospital and Medical Center*, dated March 21, 2006. As noted above, the applicant's children are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO notes that the applicant's daughter is almost eighteen years old and an adult. Additionally, the applicant has not established that the applicant's son, who is 4 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of the Dominican Republic. The applicant's wife states the applicant is the primary wage earner and caregiver. *Affidavit of [REDACTED] supra.* The AAO notes that it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in the Dominican Republic. Additionally, the applicant's wife is a native of the Dominican Republic, who spent her formative years in the Dominican Republic, she speaks Spanish, and there is no evidence that the applicant and his wife have no family ties in the Dominican Republic. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in the Dominican Republic.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, maintaining her employment and in close proximity to her family. The applicant's wife states she does not want to go to the Dominican Republic. *See affidavit of [REDACTED] supra.* She states "[t]he U.S. is the country where [she] [has] become a productive member of society, as a woman free to pursue [her] interests and fearless about being discriminated against just because of [her] gender." *Id.* As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states she will not be able to afford to send her son to private school without the applicant's income. *Id.* Additionally, the record establishes that the applicant and his wife have incurred various financial responsibilities; however, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Further, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's spouse faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor

present in every case, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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