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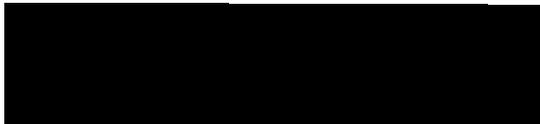
U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 30 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 ten years of her last departure from the United States. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their U.S. citizen child.

The Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Director*, dated March 20, 2006.

On appeal, the applicant asserts that she has demonstrated that her qualifying relative would suffer extreme hardship if she were removed from the United States. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; employment letters for the applicant and her spouse; medical letters for the applicant's spouse; Form W-2s for the applicant and her spouse; tax statements for the applicant and her spouse; and bank statements for the applicant and her spouse. 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 entered the United States in February 1995 without inspection. *Form I-485, Application to Register Permanent Residence or Adjust Status*. The applicant remained in the United States until November 22, 2002, when she departed the United States under advance parole. *See Dominican Republic entry stamp on passport; See also Authorization for Parole of an Alien into the United States*. The applicant filed her initial Form I-485 on March 3, 1997 which was denied on July 29, 1999. The applicant filed her second Form I-485 on July 31, 2002. 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 July 29, 1999, the date of denial of her first Form I-485, until July 31, 2002, the date she filed the second Form I-485. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of her November 22, 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 herself or her child 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 whether he resides in the Dominican Republic or the United States, as he is not required to reside outside 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.

If the applicant's spouse travels with the applicant to the Dominican Republic, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of the United States whose parents were born in the Dominican Republic. *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 the Dominican Republic. The applicant's spouse states that he often has back problems due to his strenuous physical work. *Statement from the applicant's spouse*, dated July 14, 2003. He has therefore seen a chiropractor almost every week for about three years. *Id.* In 2002, he had gallbladder surgery. *Id.* As a result of this surgery, he must constantly be vigilant about the foods he eats. *Id.* The applicant's spouse also states that in 2001 he had orthoscopic knee surgery and as a result, his left knee continues to stiffen up. *Id.* The AAO acknowledges the letters submitted by the physicians of the applicant's spouse. However, it notes that these medical statements do not specify the ailments from which the applicant's spouse suffers nor indicate how the life of the applicant's spouse is impacted. [REDACTED] states only that the applicant's spouse has been under his care since April 2002 and receives weekly treatments. [REDACTED] Einhorn simply notes that the applicant's spouse was seen in his office in 2007 for injuries sustained in 1995. *See statement from [REDACTED]* dated July 14, 2003 noting that the applicant's spouse has been under his care since April 2002 and receives weekly treatment, and *statement from [REDACTED]* dated July 14, 2003. There is nothing in the record to document that appropriate treatment would be unavailable to the applicant's spouse in the Dominican Republic. Furthermore, the record does not document that the applicant spouse's health conditions would affect his ability to obtain work. Counsel asserts that the applicant's spouse is at risk for having additional back problems, including surgery on his back. *Attorney's brief*, dated May 15, 2006. As previously noted, the medical documentation in the record fails to specify the health conditions of the applicant's spouse as well as any additional problems he may encounter in the future. 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). The applicant's spouse has several years experience working as a driver for a tile company. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. There is nothing in the record to demonstrate that the applicant and/or her spouse would be unable to contribute to their family's financial well-being from a location other than the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the Dominican Republic.

If the applicant's spouse resides in the United States, the applicant needs to establish that her 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*. The applicant's spouse states that, due to his bad left knee, he has a hard time getting out of bed in the mornings. *Statement from the applicant's spouse*, dated July 14, 2003. He states that if the applicant were not there to help him, he would probably have to hire a part-time nurse or assistant to help him get out of bed. *Id.* As previously noted, the specific health conditions of the applicant's spouse are not documented by the medical letters submitted into the record. There is nothing in the record to document that the applicant's spouse's ability to function is limited. 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)). Furthermore, the record does not document that the applicant's spouse would be unable to hire someone to assist him with the care he asserts he needs. The applicant's spouse states that he and the

applicant would suffer a financial hardship if she were to leave the United States. *Statement from the applicant's spouse*, dated July 14, 2003. He notes that jobs are difficult to come by in the Dominican Republic, and that, whatever job she would be able to obtain there, she would not be able to assist him in saving for their dream house. *Id.* As previously noted, the record fails to include documentation, such as country conditions publications documenting the economy and employment rate in the Dominican Republic. 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 he loves the applicant very dearly and relies on her to be a stabilizing factor in his life. *Statement from the applicant*, dated July 14, 2003. 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 his situation, if he remains in the United States, from that of other individuals separated as a result of removal. 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.