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FILE:

[REDACTED]

Office: ACCRA, GHANA

Date: OCT 25 2006

IN RE:

[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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer-in-Charge, Accra, Ghana, denied the Form I-601 Application for Waiver of Grounds of Inadmissibility. 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 Gambia 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 applicant is engaged to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that the applicant had no qualifying relative on which to base his claim and the application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated May 10, 2004.

On appeal, the applicant states that his fiancée's life is extremely hardened by his absence. *Applicant's Statement*, at 2, undated.

The record includes, but is not limited to, two psychologist letters for the applicant's daughter, the applicant's statement, a statement from the applicant's daughter's mother and financial information for the applicant's daughter's mother. 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.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

- (a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé(e) is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

- (a) Fiance (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required*. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

In the present application, the record indicates that the applicant entered the United States on June 19, 1994 with an F-1 student visa. On July 25, 1995, he was interviewed in relation to his application for asylum. His request for asylum was referred to the immigration court, and on August 8, 1995 he was issued an order to show cause for a hearing before an immigration judge. On July 27, 1997 the judge denied his request for asylum. The applicant appealed the asylum denial and his appeal was dismissed by the Board of Immigration Appeals (BIA) on August 7, 1998. The BIA granted the applicant voluntary departure for a period of 30 days. The applicant departed the United States in November 2002. Therefore, the applicant accrued unlawful presence from September 7, 1998, the day after his period of voluntary departure expired, until November 2002, the date he departed the United States. In applying for a fiancé(e) visa, the applicant is seeking admission within 10 years of his November 2002 departure from the United States. The applicant is

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 U.S. citizen fiancée of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

Therefore, an analysis under *Matter of* [REDACTED] is appropriate in this case. The AAO notes that extreme hardship to the applicant's fiancée must be established in the event that she resides in Gambia or in the event that she resides in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his fiancée in the event that she resides in Gambia. This situation is not addressed by the applicant.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his fiancée remains in the United States. The applicant states that his fiancée's life will be extremely hardened due to financial, social and emotional strains. *Applicant's Statement*, at 2. The applicant states that his fiancée cannot maintain the household, attend school, work and give his child a decent future by herself. *Id.* The record reflects that the applicant's daughter is experiencing significant problems due to the applicant's absence. *Psychologist's Letter*, at 1, dated August 19, 2005. The applicant states that his daughter is currently under the care of his fiancée. *Applicant's Initial Statement*, at 1, dated June 14, 2004. The mother of the applicant's daughter states that the child stays with the applicant's fiancée on the weekends and some weekdays. *Statement of* [REDACTED] dated June 12, 2004. The AAO notes that the applicant's daughter is not a qualifying relative and her hardship is only relevant to the extent it causes hardship to the applicant's fiancée. This type of hardship has not been shown. In addition, the psychologist states that the applicant's daughter lives with her mother. *Psychologist's Letter*, at 1.

Based on the limited evidence presented, extreme hardship has not been shown to the applicant's fiancée in the event that she relocates to Gambia or if she remains in the United States without the applicant.

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 fiancée will endure hardship as a result of separation from the applicant. However, her situation, if she 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.

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