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

PUBLIC COPY

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[REDACTED]

FILE:

Office: JACKSONVILLE, FL

DEC 07 2007
Date:

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 waiver application was denied by the Officer in Charge, Jacksonville, Florida. 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 10 years of his last departure from the United States. The applicant is married to a U.S. citizen, has one U.S. citizen son and one U.S. citizen stepson. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative, his spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated December 1, 2005.

On appeal, counsel asserts that an Immigration and Naturalization Service (INS) officer told the applicant that as long as he did not relinquish his domicile in the United States, his temporary departure would not affect his pending adjustment application. *Form I-290B*. Counsel also notes that the applicant has submitted a statement to establish that his inadmissibility would result in extreme hardship to his U.S. citizen spouse and two U.S. citizen minor children, one of whom suffers from chronic fevers and convulsions. *Id.*

In support of the applicant's waiver application, the record includes, but is not limited to, a copy of the applicant's passport; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; copies of the birth certificates for the applicant's son and stepson; a medical letter regarding the applicant's mother in the Dominican Republic; Forms G-325A, Biographic Information sheets, for the applicant and his spouse; a Form I-864, Affidavit of Support; a Form I-213, Record of Deportable/Inadmissible Alien; and statements from the applicant dated July 9, 2002 and October 7, 2005. 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.

The record indicates that the applicant entered the United States without inspection on February 3, 2000. *Statement from the applicant*, dated July 9, 2002. On April 30, 2001 the applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status. *Form I-485*. On October 10, 2001 the applicant left the United States to visit the Dominican Republic. *Statement from the applicant*, dated July 9, 2002. The applicant returned to the United States on November 8, 2001. *Form I-512, Authorization for Parole of an Alien to the United States*.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. As previously noted, counsel asserts that an immigration official told the applicant that as long as he did not relinquish his domicile in the United States, his temporary departure would not affect his pending adjustment application. *Form I-290B*. 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 Obaigbena*, 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). Furthermore, the Form I-512 issued to the applicant states in pertinent part:

Remarks: NOTICE TO APPLICANT: Presentation of this authorization will permit you to resume your application for adjustment of status upon your return to the United States. If your adjustment application is denied, you will be subject to removal proceedings under section 235(b)(1) or 240 of the Act. If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

Although the applicant departed the United States with permission and subsequently returned to the United States under an authorization for parole, his departure nevertheless subjected him to the inadmissibility provisions under section 212(a)(9)(B)(i) of the Act. As such, the AAO finds that the applicant was unlawfully present from February 3, 2000 until April 30, 2001. As he has been unlawfully present in the United States for one year or more, the applicant is inadmissible to the United States for 10 years from October 10, 2001, the date of his departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from 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's children or that the applicant himself would experience if not admitted to the United States 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 that would be suffered by the applicant's spouse if the applicant is removed. 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 a qualifying relative of the applicant, the applicant's spouse, must be established in the event that she resides in the Dominican Republic 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.

If the applicant's spouse joins the applicant in the Dominican Republic, the applicant needs to establish that she would suffer extreme hardship. The applicant, however, does not address the hardships that would be faced by his spouse should she move to the Dominican Republic. Accordingly, the applicant has not demonstrated that his spouse would experience extreme hardship upon relocation. 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 Dominican Republic.

To establish that his spouse would suffer extreme hardship if she remained in the United States, the applicant contends that she and his two children are totally dependent on his income. The applicant states that he has worked for the MacDonal'd's (sic) as a manager for a number of years and by leaving the United States, he would lose his job which is the source of support for his family. *Statement from the applicant*, dated October 7, 2005. The applicant states that he and his spouse have purchased a home which costs them \$1500 a month in mortgage payments. *Id.* The AAO observes that the record fails to include a letter of employment from the McDonald's corporation confirming the applicant's employment. Furthermore, there is nothing in the record to demonstrate that the applicant would be unable to obtain employment in the Dominican Republic that would enable him to financially support his family or that the applicant's spouse would be unable to obtain employment to assist with the family's expenses. The record demonstrates that the applicant's spouse has held various jobs in the past as a crew member at McDonald's and Burger King and a teacher at La Petite Academy & Pre-School. *Form G-325A, Biographic Information sheet, for the applicant's spouse.*

The applicant also states that one of his children suffers from feverish convulsions. *Id.* The AAO notes that the applicant's children are not qualifying relatives in this particular case and there is nothing in the record to demonstrate the impact of the children's health upon the applicant's spouse, the qualifying relative. Furthermore, the record fails to include any type of medical documentation that would establish the health condition of the applicant's child. 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 record shows that the applicant and his spouse have been married since December 29, 2000. *See marriage certificate.* 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 inadmissibility. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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.