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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 21 2007

IN RE:

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.

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 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 her last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States and she 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 her husband and United States citizen 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. *Decision of the Director*, dated June 23, 2006.

On appeal, the applicant, through her husband, claims that the Director's decision "will harm and destroy [their] family unity and will totally destroy the future of [his] family." *Letter from [REDACTED] attached to Form I-290B*, filed July 24, 2006.

The record includes, but is not limited to, a statement by the applicant's husband, an evaluation report by Child and Adolescent Psychiatric Evaluation Service regarding the applicant's son, a letter from [REDACTED] regarding the applicant's son's medical condition, and letters of reference for the applicant. 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 son 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, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident son. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant and [REDACTED] were married on September 4, 1992, in the Dominican Republic. The applicant entered the United States on a B1/B2 nonimmigrant visa on May 26, 1996, with authorization to remain in the United States until June 24, 1996. On December 24, 1997, the applicant's son, [REDACTED] was born. On March 25, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and a Form I-130. On January 14, 2004, the applicant departed the United States. On May 17, 2006, the applicant filed a Form I-601. On June 22, 2006, the Director approved the Form I-130. On June 23, 2006, the Director denied the Form I-485 and the Form I-601, finding that the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her lawful permanent resident spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until March 25, 2003, the date the applicant filed her Form I-485. The applicant is attempting to seek admission into the United States within 10 years of her January 14, 2004 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 herself 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.

The AAO finds that the applicant has demonstrated extreme hardship to her husband if he remains in the United States without the applicant. The AAO notes that the applicant and her husband take care of their minor son, who has major physical and developmental problems. See *Letter from [REDACTED]* dated July 17, 2006; see also *See Evaluation Report, Child and Adolescent Psychiatric Evaluation Service*, filed July 24, 2006. The applicant's husband would experience extreme hardship without the applicant in the United States helping to care for their son. However, the applicant has not demonstrated that her husband and son could not join her in the Dominican Republic.

The applicant's husband states that if the applicant is removed from the United States, it will result in extreme hardship to him and his son. *Motion to Reopen*, filed July 24, 2006. The applicant's husband states their son is "very sick and in great needs [sic] of having [the applicant's] care and love around the clock." *Id.* [REDACTED] states the applicant's son has a "history of right multicystic dysplastic kidney, short stature, [and] mild persistent asthma." *Letter from [REDACTED]*, *supra*. The AAO notes that the applicant has not established that her son could not receive medical treatment for his conditions in the Dominican Republic. Additionally, the applicant's son has "cognitive issues," and to help him in his development, the applicant's husband claims that the applicant has to "work with a counselor to develop skills for parenting a child with cognitive issues and to work on co-parenting issues related to their separation." *Id.* The AAO notes that it has not been established that the applicant's son, who is 9 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of the Dominican Republic. Further, the applicant's son speaks Spanish, which is the language spoken in the Dominican Republic. See *Evaluation Report, Child and Adolescent Psychiatric Evaluation Service, supra* ("Spanish is the primary language spoken at home, although [REDACTED] speaks both Spanish and English."). The AAO notes that there were no assertions made regarding the extreme hardship the applicant's husband would suffer if he joined the applicant in the Dominican Republic. The applicant's husband is a native of the Dominican Republic, who spent all his formative years in the Dominican Republic, and he speaks Spanish. In addition, it has not been established that the applicant has no family ties in the Dominican Republic or that she and her husband could not obtain employment in the Dominican Republic. The AAO finds that the applicant failed to establish extreme hardship to her spouse if he accompanies her to the Dominican Republic.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if he were to join the applicant in the Dominican Republic.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband if he were to join his wife in the Dominican Republic. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.