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U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

AUG 12 2009

FILE: [redacted] (PTS 2006 130 001) Office: MEXICO CITY, MEXICO (SANTO DOMINGO, DR) Date:

IN RE: [redacted]

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), Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11) and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico (Santo Domingo, Dominican Republic) and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation, pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and seeking admission within ten years of her last departure from the United States, and pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), as one who at any time has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law. The applicant is the spouse of a U.S. citizen. 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), section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the District Director*, at 4, dated November 28, 2006.

On appeal, counsel states that the applicant was improperly refused a visa under sections 212(a)(6)(C)(i) and 212(a)(6)(E) of the Act, and it can be demonstrated that the applicant's spouse would suffer extreme hardship if she is excluded from the United States. *Form I-290B*, dated December 21, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, and articles related to criminal activity in Trinidad.

Counsel asserts that the sole basis for the section 212(a)(6)(C)(i) refusal was an INS "hit" from 2000, the hit pertained to the applicant's expedited removal from the United States on March 11, 2000, and she was not found inadmissible under section 212(a)(6)(C)(i) of the Act when she was in expedited removal proceedings. *Brief in Support of Appeal*, at 1,7, dated December 21, 2006.

However, the applicant's Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, dated March 10, 2000, provides evidence that the applicant sought to procure admission to the United States by fraud or willful misrepresentation. The applicant presented a B1/B2 visa, seeking admission as a nonimmigrant visitor even though her intention was to resume her nearly four-year residence in the United States. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, at 2. Accordingly, the applicant misrepresented a material fact in attempting to

procure admission into the United States and as such, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[1]

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant entered the United States on a B1/B2 visa on June 28, 1996, her authorized period of stay expired on July 27, 1996, she received a three month extension of her stay and she departed the United States in February 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 2000, when she departed the United States. The applicant is 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 and seeking readmission within ten years of her February 2000 departure.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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[1] Counsel asserts that the sole basis for the section 212(a)(6)(E) refusal was an INS "hit" from 2000, the hit pertained to the applicant's expedited removal from the United States on March 11, 2000, she was intercepted when the Passenger Analytical Unit at the JFK airport discovered the previous day that she was the subject of a Treasury Enforcement Communication System lookout for alien smuggling, upon her arrival she was not asked a single question about smuggling, the only evidence of alien smuggling comes from a malicious telephone call that placed her name in the system, and she was not placed in removal proceedings before an immigration judge under 8 C.F.R. § 235.3(b)(3) for a section 212(a)(6)(E) finding of inadmissibility. *Brief in Support of Appeal*, at 1-4, 6-7. The AAO notes that there is insufficient evidence in the record to make a determination as to whether the applicant is inadmissible under section 212(a)(6)(E) of the Act as one who at any time has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(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.

A section 212(a)(9)(B)(v) waiver and a section 212(i) waiver of the relevant bars to admission are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her spouse's children is not considered in these waiver proceedings unless it causes hardship to a qualifying relative. 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant. These factors include the presence of 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 must be established whether the qualifying relative resides in Trinidad or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Trinidad. Counsel states that the applicant's spouse has an established job with the New York Transit Authority, he would have great difficulty finding comparable employment in Trinidad, and escalating crime and violence make Trinidad a very unsafe place to live. *Brief in Support of Appeal*, at 15. The record includes articles related to random, violent crimes committed in Trinidad. Counsel states that the applicant's spouse is suffering from depression and requires frequent counseling with his pastor. *Brief in Support of Appeal*, at 15. However, the record does not include documentary evidence to establish that the applicant's spouse has been diagnosed with depression, that he is receiving treatment for depression or that his depression is related to potentially residing in Trinidad. It also contains no country conditions materials that demonstrate that the applicant's spouse would be unable to find employment in Trinidad. Going on record without supporting documentation will not meet the applicant's burden of proof in 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)). While the AAO notes the submitted media articles documenting crime and violence in Trinidad, it does not find them to establish that the applicant's spouse would be in danger if he joined the applicant. The record does not include sufficient evidence of emotional, financial or any other forms of hardship that the applicant's spouse would encounter in Trinidad. Based on the record, the AAO finds that the applicant's spouse would not suffer extreme hardship if he relocated to Trinidad permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. As mentioned, counsel states that the applicant's spouse is suffering from depression and requires frequent counseling with his pastor. *Brief in Support of Appeal*, at 15. The applicant's spouse states that he met the applicant in 1998; his children from a previous relationship, who have been in a broken home for most of their lives, are ready to join him in the United States; he feels like a disappointment; his children will need a mother figure in their lives with all of the bad influences in the world; a complete family is instrumental in their development; he has sleepless nights; he has turned to his pastor for counseling; he cannot undergo this loneliness anymore; it is difficult to concentrate on his job; he is facing financial hardship due to his visits to Trinidad, assisting the applicant, his expenses and the arrival of his children; and, in the United States, the applicant could work to help meet their expenses. *Applicant's Spouse's Statement*, at 1-6, dated October 8, 2006. The AAO acknowledges the claims of counsel and the applicant's spouse. However, it does not find the record to establish that the applicant's spouse has been diagnosed with depression, that he is being treated for depression or that his depression is related to separation from the applicant. The record also fails to document that the applicant's spouse has filed immigrant visa petitions to bring his children to the United States or to establish how he will be affected by having to care for them as a single parent. Neither does it include documentary proof of the applicant's spouse's financial situation in the applicant's absence. The record does not include sufficient evidence of emotional, financial or any other forms of hardship that the applicant's spouse would encounter if he resided in the United States without the applicant. Based on the record, the AAO finds that the applicant's spouse would not suffer extreme hardship if he remained in the United States.

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.

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 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.