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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

AUG 12 2009

FILE: Office: JOHANNESBURG, SOUTH AFRICA 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:

SELF-REPRESENTED

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 application was denied by the Officer in Charge, Johannesburg, South Africa and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ireland and a citizen of Ireland and South Africa who is 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 admission within ten years of his last departure from the United States.

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. The application was denied accordingly. *Decision of the Officer in Charge,* dated May 31, 2006.

On appeal, the applicant submits additional evidence to meet his burden of establishing extreme hardship to his qualifying relative, as necessary for a waiver. *Form I-694.*

In support of these assertions the record includes, but is not limited to, statements and emails from the applicant and his spouse; a statement from the applicant; emails from friends; offers of employments for the applicant; foreign criminal documentation; an employment letter for the applicant's spouse; a police clearance letter for the applicant; an affidavit from the applicant's parents; tax returns and W-2 Forms for the applicant's spouse; and medical records for the applicant. 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 reflects that the applicant was admitted to the United States on May 26, 2002 under the Visa Waiver Program for 90 days. *Form I-877, Record of Sworn Statement; Form I-213, Record of Deportable/Inadmissible Alien.* The applicant overstayed his visa, remaining in the United States until April 26, 2004. *Id.* The applicant accrued unlawful presence until he departed the United States. As the applicant is seeking admission to the United States within ten years of his 2004 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.[1]

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 experiences as a result of his inadmissibility is not directly relevant to the determination as to whether he 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 she resides in Ireland, South Africa or the United States, as she 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 joins the applicant in Ireland, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-*

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[1] On August 27, 1997 the applicant was convicted in South Africa for fraud. *Clearance Certificate, National Commissioner South African Police Service.* The AAO notes that the record before it does not contain sufficient documentation to allow it to determine whether the applicant's fraud conviction was a conviction for a crime involving moral turpitude and, thus, an additional bar to his admission. However, even if the applicant's fraud conviction is a conviction for a crime involving moral turpitude, a waiver granted to the applicant under section 212(a)(9)(B)(v) of the Act would also waive inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

325A, Biographic Information sheet, for the applicant's spouse. Her parents, siblings, grandparents, aunts, uncles, and cousins live in the United States. *Statement from the applicant's spouse*, dated March 14, 2006. The applicant does not claim and the record does not address how the applicant's spouse would be affected if she moved to Ireland. Accordingly, the AAO is unable to find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Ireland.

If the applicant's spouse joins the applicant in South Africa, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A, Biographic Information sheet*, for the applicant's spouse. Her parents, siblings, grandparents, aunts, uncles, and cousins live in the United States. *Statement from the applicant's spouse*, dated March 14, 2006. The applicant's spouse states that the applicant has a skin condition on his legs that causes extreme discomfort/inflammation and is treated with expensive creams and oral medication prescribed only by a specialist. *Id.* She notes that care in South Africa is very costly. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record fails to include any documentation from a licensed healthcare professional documenting this condition. Going on record without supporting documentary evidence will not meet the 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)). Furthermore, as previously noted, the applicant is not a qualifying relative in this case and the record fails to address how any health condition the applicant may have would affect the applicant's spouse, the only qualifying relative in this case. The record also makes no mention of whether the applicant's spouse suffers from any type of health condition that would require treatment in South Africa, physical or mental, and if so, whether she would be able to receive adequate care. The applicant's spouse states she resided in South Africa with the applicant for a period of time and is happy to visit for a two-week holiday during the festive season. *Statement from the applicant's spouse*, dated January 5, 2006. Although the applicant's spouse states that the applicant's South African salary is very low (*Statement from the applicant's spouse*, dated March 14, 2006), her assertion does not establish that she and the applicant would be unable to obtain employment in South Africa that would provide them with incomes sufficient to meet their needs. Going on record without supporting documentary evidence will not meet the 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)). The record does not document, through published country conditions reports, the economic situation in South Africa and the cost of living there. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in South Africa.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* Her parents, siblings, grandparents, aunts, uncles, and cousins live in the United States. *Statement from the applicant's spouse*, dated March 14, 2006. The applicant's spouse notes that the applicant's South African salary is very low and does not enable him to send money to her to pay for their travel and living expenses. *Statement from the applicant's spouse*, dated March 14, 2006. While the AAO acknowledges this assertion, it notes that the record does not document the applicant's earnings or his expenses in South Africa. Neither does it include published country conditions reports to document the economic situation and employment opportunities in South Africa and Ireland. Furthermore, the record does not include

documentation such as mortgage or rent statements, utility bills, or credit card bills, showing the expenses of the applicant and his spouse. As previously noted, 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 she has never experienced such loneliness in her life as she has when living without the applicant. *Statement from the applicant's spouse*, dated January 5, 2006. She notes that they need each other in their lives. *Id.* The AAO acknowledges the hardships faced by the applicant's spouse. However, 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 hardship experienced by the families of most aliens being removed. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her 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 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.

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.