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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]

FILE: [redacted] Office: NEW YORK, NY Date: JAN 08 2010

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. 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 Haiti 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 ten years of her last departure from the United States. The applicant's spouse and child are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish that the denial of her waiver application would result in extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 3, dated October 7, 2009.

On appeal, counsel states that the district director abused her discretion and committed reversible error in denying the waiver based upon erroneous assertions and that the decision was against the weight of the evidence. *Form I-290B*, at 2, received November 5, 2009.

The record includes, but is not limited to, counsel's brief, a physician's letter for the applicant's spouse, medical articles, country conditions information on Haiti, a social worker's evaluation for the applicant's spouse, employer letters for the applicant's spouse, a letter of support for the applicant and financial documents for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on May 14, 1996, filed for adjustment of status on March 20, 2001 and departed the United States in 2006. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until March 20, 2001, the date she first filed for adjustment of status. The applicant is inadmissible to the United States under 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 and seeking readmission within ten years of her 2006 departure from the United States.

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.

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 or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child or stepchildren is not considered in section 212(a)(9)(B)(v) 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. These factors include the presence of 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 notes that extreme hardship to the applicant's spouse must be established whether he resides in Haiti or in the United States, as he 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 Haiti. Counsel states that the applicant's spouse has hypertension and is currently taking medication, he had a positive H pylori test, he would not have health insurance to cover his medical expenses in Haiti, he would not have the financial resources to get proper medical care, 40 percent of the population in Haiti have no real access to health care, and more than half of the population have no access to drugs. *Brief in Support of Appeal*, at 6-8, dated November 5, 2009. The record reflects that the applicant's spouse was diagnosed with hypertension, he is taking two hypertension medications on a daily basis, he had a positive H pylori test and he was prescribed a Prev Pac course. *Letter from* [redacted], dated April 5, 2009. Counsel details humanitarian, housing, natural disaster and security issues in Haiti. *Brief in Support of Appeal*, at 9-10, 17-19, 20-21. Counsel details the hardships that some children in Haiti experience

and states that the applicant's U.S. citizen daughter would be obligated to move to Haiti, she would suffer extreme hardship, and her bright future in the United States would be destroyed. *Id.* at 11-12. The record includes country conditions information detailing the situation in Haiti. One of these records is a U.S. Department of State Travel Warning for Haiti dated July 17, 2009.

Counsel states that the applicant's spouse will have to use his retirement savings in Haiti, he will be subjected to a 20 percent federal income tax withholding and a 10 percent early withdrawal penalty, and his family would be destitute once these funds are depleted. *Id.* at 20. The applicant's spouse stated in an interview with a licensed social worker that he has three other children who reside in the United States, one who lives with him. *Social Worker's Assessment*, at 4, dated November 3, 2009. The applicant's spouse states that he will be permanently separated from his family in the United States and it will be devastating if he is not in the United States to help them. *Applicant's Spouse's Statement*, at 1, dated July 27, 2009. The record includes supporting documentary evidence that the applicant's spouse has three other children.

Based on the record, the AAO finds that the applicant's spouse would suffer extreme hardship if he relocated to Haiti.

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. Counsel states that the applicant's spouse will suffer enormous psychological and emotional stress and his mental stability will be altered if she is not permitted to stay in the United States. *Brief in Support of Appeal*, at 9. Counsel states that the applicant and her spouse strongly feel that a child should not be separated from his/her parents; that refusing to allow family reunification may be considered as an interference with the right to family life or unity, especially where there is no realistic possibility of enjoying that right elsewhere; and traveling between the United States and Haiti would be beyond the applicant's spouse's financial capabilities. *Id.* at 14, 20. Counsel also states that the applicant's spouse has been temporarily laid off due to lack of work, he makes weekly child support payments, he and the applicant have a monthly mortgage payment, and he will not be able to survive financially without the applicant's help. *Id.* at 19.

The applicant's spouse states that his family will be in danger in Haiti, and that the fear, stress, anxiety and uncertainty of their situation will destroy him. *Applicant's Spouse's Statement*, at 2. In support of the applicant's spouse's claim of emotional hardship, the record includes a psychological evaluation prepared by a licensed social worker. At the time of his interview with the social worker, the applicant's spouse reported that his monthly mortgage payment is $805, plus $830 in maintenance fees; he and the applicant have numerous bills; he pays $680 per month in child support for his nine-year old daughter from a previous marriage; the applicant is their child's primary caregiver and is a devoted mother; their daughter is attached to the applicant and often sleeps with her at night; he is concerned about their daughter's reaction if the applicant left, he feels that he would be destroyed without the applicant's loving and supportive presence; they need to be physically together to sustain their marriage, and he is worried about his health as he is covered under the applicant's medical insurance. *Social Worker's Assessment*, at 2-3.

Based on her interview with the applicant's spouse, the social worker finds that the applicant's spouse and daughter would be faced with extreme and unusual financial, medical, emotional and psychological hardship if the applicant were removed from the United States. She further concludes that the applicant's family would face severe financial difficulties without her income, including possible bankruptcy or foreclosure, and that their health insurance benefits would be sacrificed. The social worker also concludes that the applicant's daughter would be exposed to extreme psychological trauma upon separation, that long-term separation from a parent during early childhood often results in "grief-like" trauma for children, that the applicant's daughter has already exhibited signs of separation anxiety and that separation may prevent her from adjusting through a critical stage of development. *Id.*, at 4.

The AAO, having reviewed the record, does not find the applicant to have established that her spouse would suffer extreme hardship if he remained in the United States. It notes that the record does not support counsel's claim that the applicant's spouse is unemployed. Instead, it reflects that the applicant's spouse has been laid off, as of September 1, 2009, from his part-time job as a bus driver. *Letter from Applicant's Spouse's Employer*, dated October 21, 2009. It does not, however, indicate that he has lost his full-time employment as a truck driver from which he earns approximately $49,900 annually. *2008 W-2 Wage and Tax Statement for the Applicant's Spouse.* Further, although the record offers proof of the applicant's spouse's monthly mortgage payment and child support payments, it fails to document the full-range of financial obligations he indicated would be his responsibility. It also fails to demonstrate that the applicant's spouse would be unable to obtain health insurance through his own full-time employment in the applicant's absence, thereby, meeting his and his daughter's health care needs.

Although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation prepared by the social worker in this case is based on a single interview with the applicant's spouse and fails to reflect the reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. Moreover, the conclusions reached by the social worker regarding the impact of separation on the applicant's family are, in significant part, based on findings that are not supported by the record, e.g., financial hardship, the applicant's spouse inability to obtain health insurance in the applicant's absence, and the psychological harm that would be done to their daughter by separation. The AAO acknowledges the evaluation's statements regarding the potential impacts of separation from a parent on a young child, but notes that the social worker did not observe or review an assessment of the applicant's two-year-old daughter in reaching her conclusions in the present case. Moreover, as previously discussed, hardship to an applicant's child is not directly relevant to a determination of extreme hardship in section 212(a)(9)(B) waiver proceedings and the evaluation does not establish the impact of any hardship the applicant's daughter might experience on her father, the only qualifying relative. For all these reasons, the AAO finds the submitted evaluation to be of limited value to a determination of extreme hardship.

A review of the record has failed to establish that the applicant's inadmissibility would result in extreme hardship to her spouse if he remained in the United States as well as if he relocated to Haiti. Therefore, the applicant has failed to establish eligibility for a waiver under section 212(a)(9)(B)(v)

of the Act. 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.