U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 09 2008

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 waiver application was denied by the Center Director, Vermont Service Center. 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 Canada 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 applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The center director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Center Director,* dated September 8, 2006.

On appeal, the applicant's husband asserts that he will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband,* dated September 27, 2006.

The record contains a statement from the applicant; statements from the applicant's husband; a copy of the applicant's birth certificate; a copy of the applicant's passport; police certificates supporting that the applicant has not been convicted of any crimes; a copy of a photograph of the applicant and her family; a copy of the applicant's marriage certificate; a copy of the applicant's husband's passport; copies of birth certificates for the applicant's children; a copy of a lease for the applicant; a copy of the applicant's husband's paycheck, and tax records for the applicant and her husband. 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:

> Aliens Unlawfully Present.-
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> > (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.

In the present matter, the record reflects that the applicant was admitted to the United States as a B-2 visitor for pleasure on January 20, 2003 with authorization to remain until July 18, 2003. She did not apply for or receive an extension of her status. She departed on August 26, 2004, over one year after the expiration of her B-2 status. Accordingly, she was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act 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 applicant does not contest her inadmissibility on appeal.

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 the alien experiences upon being found inadmissible is not a direct concern in section 212(a)(9)(B)(v) waiver proceedings. 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 to section 212(i) of the Act. These 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.

On appeal, the applicant's husband asserts that he will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband*, dated September 27, 2006. He explained that he and the applicant were not fully informed of U.S. immigration law, and they attempted to take appropriate measures to secure a legal status for the applicant. *Id.* at 1-2. The applicant's husband contends that being separated from the applicant and his three children for 10 years would constitute extreme hardship. *Id.* at 1. He provided that he and his three U.S. citizen children are residing in Canada with the applicant, and that he does not intend to bring his children to the United States without her. *Id.* at 2.

The applicant's husband explained that although he is residing in Canada, he commutes to the United States to work. *Prior Statement from the Applicant's Husband*, dated March 17, 2006. He indicated that this presents hardship, as he is away from their home for 11-12 hours per day. *Id.* at 1. He stated that he will have to apply for permanent residence in Canada if the waiver application is denied, which will cost $1,500. *Id.* He provided that he does not wish to reside in Canada. *Id.* He asserted that it is unlikely the Canadian government will continue to renew his temporary visa if the applicant's waiver application is denied. *Second Prior Statement from Applicant's Husband*, dated March 14, 2006. The applicant's husband stated that he

and the applicant do not have sufficient economic resources to maintain two households. *Id.* at 2. He asserted that the applicant would be compelled to apply for welfare in Canada, causing additional psychological hardship for him. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant's U.S. citizen husband asserts that he will experience extreme hardship should the applicant be prohibited from entering the United States. However, the applicant has not shown that hardship to her husband will rise to the level of extreme hardship as contemplated by section 212(a)(9)(B)(v) of the Act.

The applicant's husband expressed that he is close with the applicant and he does not wish to be separated from her. Yet, the record does not reflect that denial of the present waiver application would result in family separation. The applicant, her husband, and her children reside together in Canada. The applicant has not established that her husband will be unable to continue to reside in Canada. The applicant and her husband speculate that the government of Canada may refuse to continue to renew her husband's temporary visa, yet the applicant has not presented evidence to support this assertion. The applicant's husband noted that he may apply for permanent residence in Canada. Though this application involves economic expense, the applicant has not shown that she and her husband lack sufficient resources to apply. Thus, the applicant has not shown that the denial of the present waiver application will cause her husband to be separated from her or their children.

While the applicant's husband has explained that he commutes to the United States for work, which requires him to be away from the family home for 11-12 hours per day, the applicant has not established that this arrangement is unsustainable such that her husband will not have continued access to employment. The applicant has not provided documentation or explanation that shows that her husband and their family are having significant economic challenges under their present circumstances.

The applicant's husband referenced hardship to his and the applicant's children. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable to expect that a child's emotional state will impact his or her parent. However, the applicant has not shown that her children will have significant hardship should she be prohibited from entering the United States at this time. The applicant's children continue to enjoy the presence of the applicant and the applicant's husband in Canada. As discussed above, the applicant has not established that her family will be separated if the present waiver application is denied. Thus, she has not shown that her children will experience consequences that will create notable additional hardship for the applicant's husband.

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 acknowledges that the applicant's husband would experience significant hardship should he return to the United States and reside away from the applicant and his children, primarily due to family separation. Yet, the applicant has not shown that her husband would return to the United States, either voluntarily or due to a lack of access to a legal immigration status in Canada.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by her husband should she be prohibited from entering the United States, considered in aggregate, are different or more severe that those ordinarily experienced by the family members of those deemed inadmissible. Accordingly, the applicant has not shown that hardships to her husband will rise to the level of extreme hardship. 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.