U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 26 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:

[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.

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 applicant is a native and citizen of Chile 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 his last departure from the United States. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his lawful permanent resident spouse. The application was denied accordingly. *Decision of the Director,* dated February 22, 2006.

On appeal, the applicant asserts that he has demonstrated that his spouse would suffer extreme hardship if he were removed from the United States. *Form I-290B.*

In support of these assertions the record includes, but is not limited to, a statement from the applicant's spouse; credit card statements; a car insurance policy; and telephone bills. 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 indicates that the applicant was admitted to the United States with a nonimmigrant visa on July 28, 1991 and was authorized to stay until August 23, 1991. *See Form I-94.* The applicant remained in the United States, and on August 4, 2001 he married [redacted], a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States, pursuant to section 1 of the Cuban Adjustment Act of November 2, 1966. Based on that marriage, on August 23, 2001 the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act. *See Form I-485.* On November 19, 2001 a Form I-512, Authorization for Parole of an Alien into the United States, was issued to the applicant. The applicant departed the United States on an unknown date after the issuance of the Form I-512, thereby triggering the unlawful presence provisions under the Act. The applicant thus accrued unlawful presence from April 1, 1997, the date of the enactment of unlawful presence provisions under the Act, until his application for adjustment of status was filed on August 23, 2001. The applicant was paroled into the United States on February 17, 2002 to continue his application for adjustment of status. *See Form I-512.*

As the applicant accrued unlawful presence for a period of more than one year and is seeking admission within ten years of his departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. On July 31, 2003 the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability. On September 27, 2003 the Director certified his decision on the applicant's Form I-485 to the AAO, finding the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act and to have failed to apply for a waiver of inadmissibility. The Director thus denied the application for permanent residence pursuant to section 1 of the Cuban Adjustment Act. *See Director's Certification,* dated September 27, 2003. On February 12, 2004 the AAO remanded the case to the Director for review, finding that the applicant had timely filed a Form I-601 waiver. *See Decision of the AAO,* dated February 12, 2004. On February 22, 2006, the Director denied the Form I-601 waiver and application to adjust status to permanent residence, finding that the applicant had not demonstrated extreme hardship to his qualifying relative. The applicant appealed the Director's decision denying the Form I-601 waiver. *See Form I-290B.*

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from 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 himself would experience upon removal is not directly relevant to the determination as to whether the applicant 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 removed. 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 a qualifying relative of the applicant must be established in the event that the applicant's spouse resides in Chile or the United States, as she is not required to reside outside of 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 travels with the applicant to Chile, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Cuba. *Form G-325A for the applicant's spouse*. Both of her parents reside in the United States. *Id.* The record does not address what hardship, if any, the applicant's spouse would suffer if she traveled with the applicant to Chile. The AAO notes that the applicant's spouse has worked as a housekeeper and an employee of a chef in the United States. *Id.* There is nothing in the record to demonstrate that the applicant and his spouse would be unable to contribute to their family's financial well-being from a location outside of the United States. The AAO observes that the applicant's spouse is raising her daughter with the assistance of the applicant. *Statement from the applicant's spouse*, undated. The AAO notes that the applicant's daughter is not a qualifying relative in this particular case and that the record also fails to include information regarding the hardship that the applicant's daughter would face and how this hardship would affect her mother, the qualifying relative. 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 Chile.

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 loves the applicant and states that he has been a great husband and a great father for her daughter. *Statement from the applicant's spouse*, undated. Being separated from the applicant would hurt her and her daughter deeply, making it impossible to heal. *Id.* The AAO notes there is no documentation in the record from a licensed mental health practitioner who has evaluated the mental state of the applicant's spouse and supports her claim that it would be impossible for her to heal if she were separated from the applicant. The record includes credit card statements and telephone bills, but does not include information on how the applicant's spouse would be affected on a financial level if she were separated from the applicant.

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 recognizes that the applicant's spouse will endure hardship as a result of 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 deportation or exclusion. Accordingly, the hardship that she would face does not rise to the level of extreme hardship.

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 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.