U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: MAY 29 2008

IN RE: Applicant: [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)

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica 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 record indicates that the applicant is married to a United States 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), in order to reside in the United States with his United States citizen spouse and stepson.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 8, 2006.

On appeal, the applicant states his wife is a full-time college student and he takes care of his stepson and mother-in-law. *Form I-290B*, filed May 10, 2006.

The record includes, but is not limited to, a letter from the applicant's wife, a real estate contract, and a letter from the Department of the Army. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> Aliens Unlawfully Present.-
>
> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...
>
> (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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen stepson would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is available solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's stepson will not be considered, except as it may cause hardship to the applicant's spouse.

The applicant entered the United States on April 17, 2000, on a B-2 nonimmigrant visa with authorization to remain in the United States until October 16, 2000. On March 28, 2002, the applicant married Ms. [redacted] a United States citizen, in New Jersey. On September 16, 2002, the applicant departed the United States and entered Jamaica. On September 21, 2002, the applicant reentered the United States. On December 25, 2002, the applicant departed the United States and entered Jamaica. On January 9, 2003, the applicant reentered the United States. On an unknown date, the applicant departed the United States and on March 31, 2003, the applicant reentered the United States. On July 14, 2003, the applicant filed a Form I-601. On September 15, 2003, the applicant departed the United States and entered Jamaica. On September 19, 2003, the applicant reentered the United States. On February 27, 2004, the applicant departed the United States and entered Jamaica. On March 1, 2004, the applicant reentered the United States. On December 13, 2004, the applicant departed the United States and entered Jamaica. On December 15, 2004, the applicant reentered the United States. On December 17, 2005, the applicant departed the United States and entered Jamaica. On an unknown date, the applicant reentered the United States. On April 8, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife.

The applicant accrued unlawful presence from October 16, 2000, the date the applicant's authorization to remain in the United States expired, until September 16, 2002, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of December 17, 2005, the date of his last departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant states his wife, mother-in-law, and stepson depend on him, especially because his wife is a full-time college student. *Form I-290B, supra.* The AAO notes that the applicant's mother-in-law and stepson failed to provide statements or affidavits regarding how the applicant helps to care for them. Additionally, as noted above, the applicant's stepson is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's wife states the applicant has "always been there for [her] and [her] son also [her] mother who is sick with her heart while [she] attend[s] school.... Right now [she is] in college and [the applicant] as most of the bills and burden with [her] son and helping [her] mother with things she needed." *Letter from* [redacted], dated March 3, 2006. The AAO notes that there was no documentation submitted establishing that the applicant's wife is a full-time college student. Additionally, there was nothing from a doctor indicating exactly what the applicant's mother-in-law's medical issues or prognosis are, or what assistance is needed and/or given by the applicant. The AAO notes that the applicant's wife made no statement regarding the hardship she would suffer if she joined the applicant in Jamaica. Additionally, it has not been established that the applicant's wife cannot continue her studies in Jamaica or that she has no transferable skills that would aid her in obtaining a job in Jamaica. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Jamaica.

In addition, the applicant does not establish extreme hardship to his spouse if she remains in the United States, continuing with her education and in close proximity to her mother. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of the denial of the applicant's waiver request. The AAO notes that no documentation was submitted to indicate that the applicant's spouse will experience financial hardship as a result of the separation from the applicant. The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). Further, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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 wife 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.