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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DENVER, COLORADO Date: APR 14 2009

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.

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 District Director, Denver, Colorado, 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 South Africa 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 and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 wife and stepchildren.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 21, 2006.

On appeal, the applicant claims that "there would be extreme hardships if [he] or [his] wife had to return to South Africa." *Form I-290B*, filed December 16, 2006.

The record includes, but is not limited to, counsel's brief; letters from the applicant and his wife; a letter from Tamara Lester regarding the applicant's wife's health; letters of recommendations from family and friends; and country reports on South Africa. 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:

> (B) 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.
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> . . . .
>
> (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 [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 stepchildren would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable 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, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's stepchildren will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on March 1, 1995, on a B-2 nonimmigrant visa with authorization to remain in the United States for six months. The applicant departed the United States on December 1, 1999. On March 15, 2001, the applicant reentered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until October 15, 2001. The applicant failed to depart the United States. On January 17, 2006, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 11, 2006, the applicant's Form I-130 was approved. On July 19, 2006, the applicant filed a Form I-601. On November 21, 2006, the District Director denied the Form I-485 and Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse. Additionally, on the same day, a Notice to Appear (NTA) was issued against the applicant.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until December 1, 1999, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his December 1, 1999 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being 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 (Board) 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 claims that his wife cannot join him in South Africa because "[t]here is no option for [them] to start a new life there." *Form I-290B, supra.* The applicant states that he supports his family and "[his] wife has no job or work experience." *Id.* The AAO notes that the applicant's wife may experience some hardship in relocating to South Africa, a country in which she has no previous ties; however, it has not been established that there are no employment options for her in South Africa solely because of her lack of work experience. Additionally, it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in South Africa. Counsel states the applicant's wife is "physically and emotionally fragile." *Counsel's brief*, July 12, 2006. The applicant's wife has suffered two miscarriages, and [redacted] states the applicant's wife was devastated by the first miscarriage; however, the AAO notes that if the applicant's wife joins the applicant in South Africa, there is no reason why they cannot continue to try to have children. *See letter from* [redacted], dated July 7, 2006. Additionally, the AAO notes that the applicant did not submit any medical documentation regarding his wife suffering from any medical condition that would not allow her to join him in South Africa. [redacted] states the applicant's wife will suffer depression if she joins the applicant in South Africa. *Id.* The AAO notes that other than [redacted] statement regarding the applicant's wife's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's wife is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states the applicant "assists financially with the children" and his wife cares for them; however, the AAO notes that the applicant's stepchildren are now adults. *See counsel's brief, supra.* Additionally, the applicant's stepchildren are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in South Africa.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family. The applicant states "[i]t will be virtually impossible and extremely costly to move [their] lives and start again in South Africa." *Letter from the applicant*, dated June 22, 2006. Additionally, the applicant claims that his wife has to stay in the United States to help care for her ailing father. *Form I-290B, supra.* As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant's wife is financially dependent on the applicant and she has been a housewife taking care of her children for many years; however, the AAO notes that it has not been established that the applicant's wife cannot obtain employment, especially now that all of her children are adults. *See counsel's brief, supra.* Additionally, the AAO notes that it has not been established that the applicant is unable to contribute to his wife'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 Board 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 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.