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

[redacted]

H3

FILE: SDO 2004814123 Office: MEXICO CITY (SANTO DOMINGO) Date: FEB 19 2009

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

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 the Dominican Republic 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated November 2, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from Counsel*, dated January 2, 2008.

The record contains statements from counsel; statements from the applicant's husband; medical documentation for the applicant's husband; statements from the applicant's husband's employer and coworkers; statements from the applicant's friends and sister-in-law; a copy of the applicant's husband's birth certificate; a copy of the applicant's marriage certificate, and; documentation regarding the applicant's unlawful presence in the United States. 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.

In the present matter, the record reflects that the applicant entered the United States without inspection on or about October 1, 2001. She remained until she voluntarily departed in May 2006. Accordingly, the applicant accrued over four years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. 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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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, counsel asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from Counsel*, dated January 2, 2008. Counsel states that the applicant's husband has acute depression as a result of being separated from the applicant. *Id.* at 1. Counsel contends that the applicant's husband is taking medication for mental health issues, including Paxil and Klonopin, and that he is currently under the care of a therapist. *Id.*

The applicant's husband described his relationship with the applicant and stated that they are close. *Statement from Applicant's Husband*, dated December 7, 2006. He explained that separation from the applicant has created hardship for him. *Id.* He indicated that he has struggled financially to maintain his home and support the applicant abroad. *Id.* He noted that the cost of long distance

communication and travel to the Dominican Republic is high. *Id.* He stated that his primary care physician diagnosed him with stress anxiety disorder and depression. *Id.* He indicated that he takes medication but that it does not alleviate his symptoms. *Id.* He provided that his work and health are suffering. *Id.*

In a separate statement, the applicant's husband provided that he has been employed as a head start and elementary school teacher since June 2001. *Prior Statement from Applicant's Husband*, dated May 5, 2006. He explained that the emotional difficulty of being separated from the applicant has inhibited his ability to work and perform his church activities. *Id.* at 1. He stated that he "[has] to continue to reside in the United States . . . ." *Id.* at 2.

The applicant submitted a letter from her husband's physician, [redacted], in which Dr. [redacted] stated that the applicant's husband "has severe depression due in part to his prolonged absence from his wife." *Letter from* [redacted], undated. [redacted] noted that the applicant's husband takes Paxil and Klonopin. *Id.* at 1.

The applicant submitted letters from her husband's coworkers and friends in which they attest that the applicant's husband has been experiencing emotional hardship due to separation from the applicant.

Counsel, the applicant's husband, and friends and coworkers of the applicant and her husband all attest to the emotional hardship the applicant's husband is experiencing due to separation from the applicant. The AAO acknowledges that this emotional hardship is extremel, particularly in light of the fact that the applicant's husband is under the care of a physician for depression. However, the applicant has not shown that her husband would experience extreme hardship should he relocate to the Dominican Republic to join her.

The applicant's husband stated that he has to continue to reside in the United States, yet he did not indicate why. The record reflects that the applicant's husband has held a position with his current employer since June 2001. It is evident that relocating to the Dominican Republic would require him to relinquish his position. However, the applicant has not asserted or shown that her husband would be unable to secure employment in the Dominican Republic. While the AAO acknowledges that the loss of steady employment constitutes hardship, the applicant has not shown that her husband would be unable to work in his chosen field in the Dominican Republic.

The applicant's husband indicated that he provides financial support for himself and the applicant. Yet, the applicant has not submitted an account of her and her husband's expected income or expenses should they reside together in the Dominican Republic. She has not explained whether she currently works in the Dominican Republic, providing income that may be used to meet their needs. Nor has the applicant submitted explanation or documentation of her and her husband's economic resources, such as savings or other assets. Thus, the AAO lacks sufficient information and documentation to assess the financial impact on the applicant's husband should he join her in the Dominican Republic. The applicant has not shown that her husband would endure extreme economic hardship.

The applicant has not explained whether her husband has ties to the Dominican Republic, such as friends or family residing there. Nor has the applicant indicated whether her husband speaks or writes Spanish, or whether he has experience traveling in the Dominican Republic such that he is familiar with local culture. Thus, the applicant has not established that her husband would face the challenge of adapting to an unfamiliar language and culture.

The applicant has not entered any documentation into the record regarding conditions in the Dominican Republic. The applicant has not alleged or shown that her husband would endure hardship in the Dominican Republic due to general challenges faced by all individuals residing there.

It is understood that the applicant's husband would be separated from friends and family in the United States should he relocate to the Dominican Republic, yet this is a common result when an individual relocates abroad to maintain family unity. U.S. court decisions have 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.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he join her in the Dominican Republic.

The AAO recognizes that the applicant's husband is enduring significant emotional hardship due to separation from the applicant. However, the applicant has not shown that her husband must remain in the United States and prolong their separation. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband. 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.