U.S. Department of Homeland Security
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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[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JUL 13 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. 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 Belize who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant's spouse is a U.S. citizen and her child is a U.S. citizen. She now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse and child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to either of her qualifying relatives. The application was denied accordingly. *Decision of the District Director,* dated February 12, 2007.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of fact and law in finding the applicant to be inadmissible. He further asserts that the applicant is eligible for a waiver of inadmissibility a her removal would result in extreme hardship to her spouse and son. *Form I-290B and attorney's statement*, dated March 12, 2007.

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a statement from the applicant; health insurance cards; a statement from the health insurance provider; medical records for the applicant's spouse and child; police clearance letters for the applicant; criminal records for the applicant; a published country conditions report on Belize; tax statements; U.S. Air Force identification credentials for the applicant's spouse; U.S. Air Force Duty History Information for the applicant's spouse; a cable bill; and statements from friends. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the

> satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Prior to addressing whether the applicant qualifies for a waiver under section 212(h) of the Act, the AAO finds it necessary to address another basis for inadmissibility. The AAO observes that the applicant has resided in the United States since May 1992. *Form G-325A, Biographic Information, for the applicant.* While the record is unclear as to how the applicant initially entered the United States, the AAO notes that it does establish that the applicant was admitted to the United States on a B-2 visa valid for six months on September 22, 2001 at Los Angeles, California. *Form I-94, Departure Card.* The applicant therefore was no longer in a lawful status as of March 22, 2002. *Id.* The applicant remained in the United States and filed a Form I-485, Application to Register Permanent Resident or Adjust Status on August 26, 2003. *Form I-485.* The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant departed the United States, returning on May 21, 2004 and again on October 24, 2004 under an advance parole authorization. *Form I-512L, Authorization for Parole of an Alien into the United States*, dated April 26, 2004. Although not addressed by the District Director, the AAO notes that the applicant's departure from the United States under the advance parole authorization triggered the unlawful presence provisions of the Act and that she accordingly accrued unlawful presence from March 22, 2002, the day after her lawful nonimmigrant status ended, to August 26, 2003, the date she filed the Form I-485. In applying to adjust her status, the applicant is seeking admission within ten years of her 2004 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.

In that the waiver requirements under section 212(a)(9)(B)(v) of the Act are more restrictive than those found in section 212(h), the AAO will not analyze whether the applicant is inadmissible for having committed a crime involving moral turpitude. It notes that eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act will also meet the requirements of section 212(h).

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a 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 experiences upon removal is not directly relevant to the determination as to whether he 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 found to be inadmissible. 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 the applicant's spouse must be established whether he resides in Belize or the United States, as he is not required to reside outside 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 joins the applicant in Belize, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Belize and his parents continue to reside there. *Form G-325A, Biographic Information, for the applicant's spouse.* The applicant's

spouse served in the United States Air Force in Iraq and has been suffering from a variety of medical problems since his return. *Attorney's statement*, dated March 12, 2007; *U.S. Air Force identification credentials; U.S. Air Force Duty History for the applicant's spouse*, dated May 24, 2004. Among these complaints are chronic pain, chronic rhinitis, dermatitis, hemorrhoids, chronic fatigue and ringing in the ears. *Id.; Medical records for spouse*, dated September 27, 2006. A published country conditions report included in the record notes that while medical care for minor conditions is generally available in urban areas, trauma or advanced medical care is limited even in Belize City and is extremely limited or unavailable in rural areas. *Belize, Consular Information Sheet, U.S. Department of State*, dated March 5, 2007. While the AAO acknowledges this information on the availability of health care in Belize, it does not find the record to establish whether the health conditions noted in the medical records of the applicant's spouse are minor or of a more serious nature that would not be readily treatable in Belize. Counsel also asserts that the applicant's spouse, who is currently covered by Tricare health insurance (*See health insurance cards*), would be unable to receive healthcare coverage in Belize. *Attorney's statement*, dated March 12, 2007. The record, however, does not document that the applicant's spouse would be unable to acquire health insurance in Belize. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the applicant's spouse, while not on active duty, is employed as a private consultant by the United States Coast Guard and that he would not be able to fully support his family and pay for medical treatment for himself and his son should they relocate to Belize. *Attorney's statement*, dated March 12, 2007. Again, however, the record does not support counsel's claim. The country conditions information in the record does not address the economic situation and employment opportunities in Belize. *Belize, Consular Information Sheet, U.S. Department of State*, dated March 5, 2007. Accordingly, the record does not establish that the applicant and her spouse would be unable to find employment and support their family in Belize. *Matter of Obaigbena, supra*.

The applicant states that her child was born with a medical condition involving his right foot. *Statement from the applicant*, dated March 6, 2007. She notes that he was seen by Children's National Medical Center Pediatric Orthopedics and diagnosed with a medical condition involving his pelvis. *Id.* Counsel asserts that the applicant's child would be unable to receive adequate treatment for his condition in Belize. *Attorney's statement*, dated March 12, 2007. The record includes a letter that indicates the applicant's child was given a specialty referral to the Children's National Medical Center in Washington, D.C. *Statement from Health Net Federal Services*, dated September 6, 2006. A billing statement from Southern Maryland Orthopaedic and Sports Medicine Center, P.C. shows that the applicant's child received an x-ray of his pelvis on November 8, 2006. *Billing statement from Southern Maryland Orthopaedic and Sports Medicine Center, P.C.*, dated November 8, 2006. While the AAO acknowledges the applicant's statement and supporting medical evidence, the record fails to identify the specific medical condition affecting the applicant's child, its severity, prognosis or treatment requirements. Moreover, as previously noted, the applicant's child is not a qualifying relative for the

purposes of this proceeding and the record fails to address how the applicant's spouse would be affected by his son's medical condition upon relocation. When looking at the aforementioned factors, the AAO does not find the record to include sufficient evidence to demonstrate that the applicant's spouse would suffer extreme hardship if he were to reside in Belize.

If the applicant's spouse resides in the United States, the applicant needs to establish that he will suffer extreme hardship. As already indicated, the applicant's spouse was born in Belize and his parents continue to reside there. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* Counsel asserts that both the applicant's child and spouse are undergoing medical treatment for severe physical conditions, and as such, they both require the attention and care of the applicant. *Attorney's statement*, dated March 12, 2007. However, as previously noted, the record fails to provide sufficient evidence to establish the specific nature or severity of the medical conditions of the applicant's spouse and child, or that the applicant's spouse would be unable to care for their child in her absence. Further, the applicant's child is not a qualifying relative for the purposes of this case and the record does not specify how the applicant's spouse, the only qualifying relative, would be affected by caring for a child with a medical condition in the United States.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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 hardship experienced by the families of most aliens being removed. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

The record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States. As such, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) 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.