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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

H3

[redacted]

FILE: [redacted] Office: JACKSONVILLE, FL Date: JUN 17 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:

SELF-REPRESENTED

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 Field Office Director, Jacksonville, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of China who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days and less than one year and seeking admission within three years of her last departure from the United States. The applicant is married to a U.S. citizen and 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.[1]

The field office director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse and the application was denied accordingly. *Decision of the Field Office Director*, at 4 dated August 21, 2007.

On appeal, the applicant details the difficulties that her spouse would experience without her. *Form I-290B*, at 2, received September 21, 2007.

The record includes, but is not limited to, the applicant's letters and evidence of her pregnancy. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States on January 25, 2005 with a K-1 fiancé visa, her status expired on April 25, 2005, she filed an application to adjust status on March 20, 2006 and she departed the United States under an advance parole authorization sometime between July 6, 2006, the date advance parole was authorized, and August 29, 2006, the date on which she returned to the United States. The applicant accrued unlawful presence from April 26, 2005, the day after her authorized period of stay expired until March 20, 2006, the date she filed for adjustment of status. The applicant was unlawfully present in the United States for more than 180 days but less than one year, and she is seeking admission to the United States within three years of her departure. Therefore, the applicant is admissible under section 212(a)(9)(B)(i)(I) of the Act.[2]

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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[1] The record indicates that the applicant has three U.S. citizen children and a non-citizen child, but evidence of their citizenships is not included in the record.

[2] The AAO notes that the applicant will no longer be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act on a date between July 6, 2009 and August 29, 2009, as three years will have elapsed since she departed the United States (i.e., no waiver will be required as of this date for any immigration applications). However, at the current time, the applicant is still inadmissible.

> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides:

> (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 violation of section 212(a)(9)(B)(i)(I) 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 to the applicant or her children will only be considered to the extent it causes hardship to the applicant's spouse. 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. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether he relocates to China or remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to China. The applicant states that going to church is a regular activity for her family, her spouse will not be able to worship God in church as there are only Communist government churches in China, her spouse will not be able to transfer his properties to China, her spouse has two properties in South Carolina, her spouse has a new home in Jacksonville where he

has planted over 20 fruit trees and he looks forward to eating the fruit, and her spouse has lived in the United States for over 46 years. *Applicant's Letter*, at 5-7, dated July 27, 2007. The record does not include supporting evidence, e.g., published country conditions reports, that the applicant's spouse would be unable to practice his religion or that he would experience emotional, financial, medical or any other form of hardship in China. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the record, the applicant has not established extreme hardship to her spouse in the event that he relocates to China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant states that her spouse has gout disease, he will have to take care of the household chores, he will have to take care of their young children, her 73-year-old spouse cannot possibly do such work every day, and her spouse's eyes cannot be open 24 hours a day to watch the children. *Form I-290B*, at 2. The applicant states that her spouse can hardly prepare the children's meals, wash their clothes and their dishes, take them to the bathroom in the middle of the night, pick up after them and take them to school and daycare. *Applicant's Letter*, at 3-4. The applicant details how both she and her spouse are needed to care for the children, states that it will not be easy for her spouse and children to live in a decent manner and be happy, and states that her children's education, social lives, health care and psychological well-being will be damaged. *Id.* at 5. The record does not include supporting evidence of the applicant's spouse's medical problem or its severity, or the claimed hardship to the applicant's children and how their hardship would affect the applicant's spouse. The record does not include any other evidence of emotional, financial, or other form of hardship if the applicant's spouse resided in the United States. Accordingly, the record does not establish extreme hardship to the applicant's spouse in the event that he remains in the United States.

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.

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 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.