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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: NEW YORK, NY Date: JUN 22 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. 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 Senegal 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 applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the record failed to establish extreme hardship to the applicant's U.S. citizen spouse as a result of his inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated August 28, 2008.

On appeal, counsel states that the applicant contends that his U.S. citizen spouse and child will suffer extreme hardship and not just mere separation as stated by the district director. *Form I-290B*, dated September 24, 2008. Counsel states that the applicant's spouse expects to give birth in September, the impact of separation will be extreme, and the applicant and his spouse intend to raise their child in the United States. *Id.* The AAO notes that the record on appeal does include a copy of the birth certificate for the applicant's U.S. citizen son, born on September 24, 2008.

The Form I-290B indicates that counsel will be submitting a brief and/or additional documentation within thirty days. The AAO notes that it has now been more than thirty days and no additional documentation has been submitted, so the present record will be considered the complete record.

The record indicates that the applicant entered the United States on a B2 visitor's visa on September 10, 2003 with an authorized period of stay until March 9, 2003. The applicant filed an application to register permanent residence on March 20, 2005. The applicant then applied for and was issued an Authorization for Parole of an Alien into the United States on June 22, 2005. The applicant stated during his adjustment interview that he and the applicant were married on November 19, 2005, traveled to Canada on their honeymoon, and returned on November 22, 2005. Therefore, the applicant accrued unlawful presence from when his authorized period of stay under the B2 visitor's visa expired on March 10, 2003 until November 2005, when he departed the United States. In applying for adjustment of status, the applicant is seeking admission within ten years of his November 2005 departure from the United States. Therefore, the applicant is 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.

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 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 and/or parent of the applicant. Hardship the applicant or his child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality

> and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Senegal and in the event that she resides in the United States, as she is not required to reside outside of 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.

The record of hardship in this case includes a copy of the applicant's U.S. citizen son's birth certificate, a statement from the applicant's spouse, a letter from the applicant's employer, and a copy of the applicant's spouse's 2007 U.S. Individual Income Tax Return.

The applicant's spouse states that she and her child will suffer extreme hardship if the applicant is removed from the United States. *Spouse's Statement*, dated March 12, 2008. She states that she and the applicant both work full time and they need each other to share in caring for their infant son. She states that they do not have immediate family members in the United States who could help them with childcare and if the applicant is removed from the United States she will have to leave the baby with a babysitter. She also states that the alternative option of raising the child overseas without her is not a viable option because she wants her child raised in the United States. She states further that she cannot relocate to Senegal because she does not want to leave the job she has had since 1999 as a developmental aide at Hudson Valley Development Disabilities Services and her job prospects in Senegal are dismal. The applicant's spouse also states that Senegal is unfamiliar to her and she anticipates having difficulty adjusting to life outside the United States. *Id.*

The letter from the applicant's employer states that the applicant has been employed with Ronit Gurleen, Inc. staring in May 2007 as a manager and that his employment is fulltime and permanent. *Letter from the Applicant's Employer*, dated March 11, 2008. The applicant's employer also states that the applicant earns $550 per week. *Id.* The AAO notes that the applicant's spouse's 2007 U.S. Individual Tax Return shows that the applicant's spouse earned $40,466 during that tax year.

The AAO finds that the current record does not support a finding of extreme hardship to the applicant's U.S. citizen spouse based on the applicant's inadmissibility to the United States. The hardship described by the applicant's spouse does not rise to the level of extreme, but describes what most families will experience as a result of having a spouse removed from the United States. In addition, no documentation was submitted to support the applicant's spouse's assertions regarding conditions in Senegal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

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 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.