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U.S. Department of Homeland Security
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: ACCRA, GHANA Date: MAR 31 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Excludability 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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, Accra, Ghana, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year-old native and citizen of Cape Verde who was found inadmissible to the United States for having been unlawfully present. The record reflects that the applicant's spouse, [redacted], is a United States citizen. The couple was married in 2003. The applicant illegally entered the United States in February 2002 and remained in the United States until his removal in January 2004. He presently seeks a waiver of inadmissibility in order to return to the United States.

The officer-in-charge determined that the applicant was inadmissible because he had been unlawfully present in the United States for a period of over one year, and that he was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to his spouse. The waiver application was denied accordingly.

On appeal, the applicant maintains that denial of a waiver would result in extreme hardship to his spouse. The record contains statements from the applicant's wife indicating that she would like to live with the applicant, but that relocating to Cape Verde would cause her emotional and financial harm. The record also contains a statement from the applicant, a statement from the applicant's mother and sister, and a medical record describing the applicant's spouses mental health condition.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

The officer in charge found the applicant inadmissible on the basis of his unlawful presence in the United States. The applicant was unlawfully present in the United States from 2002 to 2004. The applicant does not dispute the inadmissibility finding. The AAO therefore finds that the applicant is

inadmissible as charged. The question remains whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

> 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).

The applicant's spouse, [redacted], is a 45-year-old, native of El Salvador who became a U.S. citizen upon her naturalization in 1995. She and the applicant met in 2002, and married in 2003. She states that she "would like to be with [the applicant]" but "cannot be in two places at once." *See* Statement of Applicant's Spouse dated November 25, 2008. The applicant's spouse indicates that she has children living in the United States, and that she misses them greatly when she visits the applicant in Cape Verde. She further states that she misses her husband when she is in the United States. She does not wish to relocate to Cape Verde because, in relevant part, of the lower standard of living. She also expresses reluctance to relocate given the different culture and language in Cape Verde. She states that she is employed in the United States and has "everything organized here in this country." *Id.*

The AAO finds that the applicant's spouse would not face extreme hardship should she relocate to Cape Verde. In this regard, the AAO notes that the applicant and his spouse would remain together. The AAO further notes that the applicant is employed in Cape Verde and that his family has welcomed his spouse. The AAO does recognize that the applicant's spouse was found to have anxiety and depression as a result of her separation from the applicant. The AAO also notes the applicant's spouse's reluctance to be separated from her children, as well as her reluctance to relocate based on Cape Verde's lower standard of living. Nevertheless, it is well established that

"the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances". *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994); *see also Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The record also does not contain sufficient evidence to establish that the applicant's spouse would face extreme hardship should she remain in the United States, separated from the applicant. The applicant's spouse has two adult children in the United States and claims to be employed and "organized." The record does not indicate that she is or was financially dependent on the applicant. The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is denied the waiver. The AAO notes the applicant's spouse's claim that separation from the applicant is causing emotional hardship. Such hardship, however, is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme."

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9) of the Act, the burden of proving eligibility rests with the applicant. 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.