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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

H₂



FILE:



Office: MOSCOW, RUSSIA

Date:

AUG 24 2009

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility 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:



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, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ghana 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 her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 with her United States citizen husband and son.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 28, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he Field Office Director failed to engage in any meaningful analysis of the extreme hardship that the applicant's U.S. citizen spouse...would suffer as a result of the applicant's inadmissibility." *Form I-290B*, filed January 23, 2008. Counsel states that "given the evidence of hardship, considered in the aggregate...the applicant has established that her spouse would suffer extreme hardship if her waiver of inadmissibility were denied." *Id.*

The record includes, but is not limited to, counsel's brief, a letter and affidavit from the applicant's husband, a letter from ██████████ regarding the applicant's husband's work history, a letter from Dr. ██████████ regarding the applicant's husband's medical conditions, and documents on healthcare and country conditions in Ghana. The entire record was reviewed and considered in arriving at 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 [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 AAO notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on October 30, 1998, as a nonimmigrant visitor for pleasure. On December 22, 2003, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On June 29, 2004, the applicant's Form I-130 was approved. On July 16, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 2, 2005, the Director, Missouri Service Center, denied the applicant's Form I-485. On April 25, 2005, the applicant departed the United States. On June 23, 2005, the applicant's husband requested that the applicant's Form I-485 be withdrawn. On June 28, 2005, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On June 9, 2006, the Center Director, Vermont Service Center, denied the applicant's Form I-212. On July 11, 2006, the applicant, through counsel, filed a motion to reopen the Director's decision denying her Form I-212. On November 2, 2006, the Acting Center Director, Vermont Service Center, denied the applicant's motion to reopen. On January 25, 2007, the applicant filed a Form I-601. On December 28, 2007, the Field Office Director, Moscow, Russia, denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 30, 1999, the date the applicant's authorization to remain in the United States expired, until July 16, 2004, the date the applicant filed her Form I-485. The applicant is attempting to seek admission into the United States within 10 years of her April 25, 2005 departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is

irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that the "applicant established that unless her waiver is granted her spouse shall be subjected to extreme hardship, whether he resides in the U.S. or Ghana." *Appeal Brief*, page 2, filed January 23, 2008. In a letter dated January 20, 2008, the applicant's husband states he is "experiencing extreme financial and emotional hardship living alone, as well as, profound grief and distress without [the applicant]." In a letter dated June 29, 2006, [REDACTED] diagnosed the applicant's husband with "arthritis, elevated cholesterol, hypertension, [and] prostate enlargement." The AAO notes that on December 29, 2006, the applicant's husband had surgery due to his enlarged prostate, and there is no medical documentation in the record establishing that the applicant's husband's is still suffering from this medical condition. Additionally, there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in Ghana or that he has to remain in the United States to receive his medical treatments. Counsel states that "[o]nly the fact that the [applicant's husband] is unable sometimes to take care of himself and [the applicant] or anybody else is unable to assist him constitutes an extreme hardship for [the applicant's husband]." *Appeal Brief*, *supra* at 3. The AAO notes that if the applicant's husband joined the applicant in Ghana, then she could care for her husband. Counsel states that "[a]pproximately five years ago, [the applicant's husband] had to cut short his trip to Ghana because he got sick and was unable to find there proper medical care." *Id.* at 4. The AAO notes that other than counsel's statement, there was no medical documentation submitted establishing that the applicant's husband could not receive proper medical care in Ghana.

The applicant's husband states he is experiencing depression. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or whether any depression is beyond that experienced by others in the same situation. Counsel states that the applicant's husband performance at work has suffered since the applicant departed the United States. *See appeal brief, supra* at 3. [REDACTED] states that the applicant's husband is employed as an automotive technician; "[h]owever[,] over the past year, [the applicant's husband's] health has declined and as a result so has his work performance." The AAO notes that the applicant's husband has been employed as an automotive technician for many years, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Ghana. Additionally, the AAO notes that the applicant's husband is a native of Ghana, who spent his formative

years in Ghana, and it has not been established that he has no family ties in Ghana. The applicant's husband states his son resides with the applicant in Ghana, but he "is deeply home sick and wishes to return to back to the United States with [the applicant]." The AAO notes that the applicant's son may be experiencing some hardship in relocating to Ghana; however, the applicant's son is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Ghana.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and with access to medical care. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's husband "is an elderly man" who needs the applicant's assistance. *Appeal Brief, supra* at 2. Counsel states the applicant's husband has two adult daughters; however, "due to his daughters' relocation, [the applicant's husband] is limited to telephone calls with them. They certainly cannot take care of their elderly father." *Id.* The AAO notes that even though the applicant's husband is in his late 60's, he still works as an automotive technician, and it has not been established that he cannot care for himself in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Counsel states that the applicant's husband is forced to work to support the applicant and their son in Ghana. *Id.* at 3. The applicant's husband states "[i]t is extremely difficult to afford the mortgage and bills as the sole provider in [his] household. [He] receive[s] no additional income." The AAO notes that beyond generalized assertions regarding country conditions in Ghana, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.