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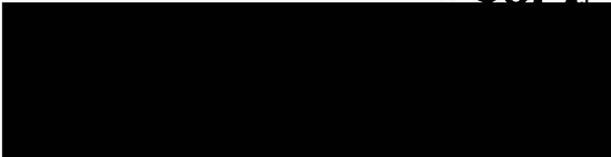
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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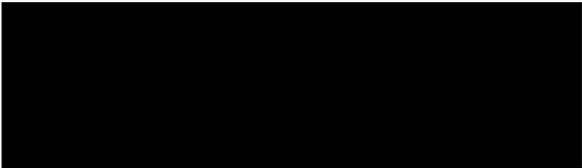
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IN RE:



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:



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).

Perry R. Hew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Spokane, Washington and 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 Canada 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 admission within ten years of his last departure from the United States. The applicant is the husband and father of U.S. citizens, and seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to his spouse, [REDACTED]. She denied the waiver application accordingly. *Decision of the Field Office Director*, dated August 7, 2009.

On appeal, the applicant states that he believes that his case was not adequately presented to U.S. Citizenship and Immigration Services (USCIS). He further asserts that his case cannot be adequately addressed in writing and asks for oral argument before the AAO. *Form I-290B, Notice of Appeal or Motion*, dated September 2, 2009.

The evidence of record includes, but is not limited to: statements from the applicant, [REDACTED] and their four sons; an offer of employment for [REDACTED] tax returns; W-2 forms for [REDACTED] medical records for [REDACTED] and the applicant; and documentation relating to the education of one of the applicant's children.

The AAO turns first to the applicant's request to present his case through oral argument. While it acknowledges this request, the AAO notes that regulation requires the requesting party to explain in writing why an oral argument is necessary. Further, USCIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to fully represent the facts and issues in this case and, consequently, denies the request for oral argument. It will now consider whether the written record establishes the applicant's eligibility for a waiver of his inadmissibility under section 212(a)(9)(B) of the Act.

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.

The record contains a March 24, 2008 affidavit in which the applicant states that he is admitting to the factual allegations against him, specifically that on or about August 1997 he was admitted to the United States as a nonimmigrant visitor for a period of six months and did not depart the United States until April 1, 2007. Based on his admission, the AAO finds that the applicant accrued more than one year of unlawful presence. As he is seeking admission to the United States within ten years of his 2007 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act .

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or his U.S. citizen children experience as a result of his inadmissibility will not be considered in these proceedings, except to the extent that it causes hardship to [REDACTED] the applicant's qualifying relative.

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 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. 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)].

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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Canada or remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to ██████████ in the event that she relocates to Canada. In the brief submitted in support of the waiver application, counsel for the applicant states that, if ██████████ moved to Canada, she would be unable to fulfill her career goals or meet her financial responsibilities. Counsel notes that ██████████ has had a long-term, successful career in the U.S. healthcare industry and has been offered a job as a Regional Director of Eligibility Services in the Patient Financial Services Department of Community Health Systems and that ignoring this opportunity and moving to Canada would be an "utter impossibility" for her. Counsel further asserts that, if ██████████ moved to Canada, she would have not employment opportunities as her job skills are not needed by the socialized healthcare system in Canada. As a result, counsel states, ██████████ who is the sole financial provider for her family, would face extreme economic hardship in Canada and, further, that she would be unable to support her two younger sons. In her own statement, ██████████ asserts that there are no healthcare positions in Canada comparable to her current job as a regional director for patient eligibility and her career would, therefore, prevent her from moving to Canada. She further states that she is solely responsible for supporting her two younger sons as the applicant was diagnosed as disabled in 1986 and subsequently assumed responsibility for their household so that she could work.

Counsel also contends that relocation could place ██████████ health at risk. Counsel states that ██████████ might have difficulty in dealing with her chronic medical problems in Canada because of the delays common to its socialized healthcare system. Counsel notes that in the past ██████████ needed emergency medical attention for a spike in her blood pressure and avoided a stroke only because of the quick action taken by the applicant and the efficiency of U.S. medical care. She suggests that this outcome might not have been as positive in Canada since it, unlike the United States, does not have the best healthcare system in the world.

The AAO notes the claims of counsel concerning the negative economic impact of relocation on [REDACTED]. However, it does not find the record to include documentary evidence, e.g., published reports on the Canadian economy or employment, to support them. The record includes documentation that establishes [REDACTED] as the financial provider for her family and that her two younger sons are financially dependent on her. However, there is no evidence in the record that demonstrates that [REDACTED] would be unable to obtain employment in Canada that would allow her to support her family, although it might not be the same type of employment she currently holds. 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). Moreover, although [REDACTED] indicates that the applicant has been disabled since 1986, the record fails to document this disability, how it affects his ability to function on a daily basis or that it would preclude him from obtaining employment in Canada and financially assisting his wife in supporting their family. Going on record without supporting documentation is not sufficient to 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)). With regard to [REDACTED] claim that the applicant has been disabled since 1986, the AAO also notes that the record contains a July 30, 2007 sworn statement from the applicant in which he states that he worked in automobile sales and as a delivery person in the United States during the period 1991-1996.

The record also fails to establish that [REDACTED] could not obtain adequate medical care in Canada, as suggested by counsel. The medical documentation in the record, which covers the period 2004-2009, indicates that [REDACTED] suffers from hypertension, anemia, weight gain, arrhythmia and hyperglycemia. However, [REDACTED] medical records are not accompanied by any medical statement(s) from the physician(s) treating her and fail to indicate the severity of her conditions, how they affect her ability to function or the extent to which a change in her current treatment programs would affect her health. The record also fails to provide documentary evidence that the Canadian healthcare system would be unable to meet [REDACTED] healthcare requirements. *Matter of Obaigbena*, supra. Accordingly, the AAO does not find the record to establish that [REDACTED] would experience extreme hardship if she relocated to Canada with the applicant.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant. Counsel asserts that if the applicant is removed from the United States, [REDACTED] would not be able to physically or mentally bear the shattering of her family and the separation from her husband to whom she has been married for 26 years. Counsel claims that [REDACTED] is subject to a high level of work-related stress and that the applicant keeps her life steady and stable. Counsel also asserts that the applicant is currently experiencing health problems himself and that his health would be an additional worry for [REDACTED] if they were to be separated.

[REDACTED] states that she suffers from cardiac arrhythmia, high blood pressure, chronic obstructive pulmonary disease and anemia, and must maintain a balance in her life so that these conditions do not worsen. She asserts that the applicant provides the "stabilizing balance" that is important to her physical well-being. She further states that the prospect of living by herself is terrifying. In separate statements, the applicant and his four sons also assert that [REDACTED] will be negatively affected by separation.

The applicant states that [REDACTED] has health issues and is upset by the possibility of their separation. The applicant's oldest son reports that he and his brothers all live outside the State of Washington and that he does not know if any of them would or could move back to watch over their mother. He states that his mother does not need more stress in her life and that he does not know what would happen to her career if his father returns to Canada. The applicant's second oldest son also asserts that separation from the applicant would increase the stress on his mother and that his mother's health problems require someone to look out for her since she works so hard.

The AAO notes the claims made by counsel and [REDACTED] regarding the impact of separation on her **physical and emotional health**. However, as previously discussed, the record fails to include documentation to indicate the severity of [REDACTED] health conditions or how they affect her ability to function. Moreover, it also fails to document how [REDACTED] health, physical or mental, would be affected by separation from the applicant. The record contains no statement from a physician treating [REDACTED] physical problems or an evaluation from a licensed mental health practitioner assessing the impact of the applicant's removal on her mental health, including how it would affect her ability to function at work. The record also fails to establish that the applicant's health would be a basis of **additional concern for [REDACTED]**. While it does include medical documentation that indicates the applicant has hypertension, a history of tobacco use, anxiety and BPH, it provides no statement from a physician or other healthcare provider that addresses the severity of his conditions, whether they impair his ability to function, or how a change in treatment programs would affect his health. The record also fails to document that any of the applicant's medical conditions could not be effectively treated in Canada.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO acknowledges that [REDACTED] would experience hardship as a result of the applicant's inadmissibility to the United States. It notes, however, that the record offers no documentary evidence that would distinguish the hardships she would face from those normally experienced by individuals whose spouses reside outside the United States as a result of removal or exclusion. Accordingly, the AAO does not find the applicant to have established that [REDACTED] would face extreme hardship if his waiver request were to be denied and she remained in the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that [REDACTED] would face extreme hardship if the applicant is refused admission. Accordingly, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.