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FILE:

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Office: ACCRA, GHANA

Date: JUL 06 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Accra, Ghana. 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 Cote d'Ivoire who was found to be inadmissible to the United States for having been unlawfully present in the United States for more than one year. 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), the applicant is inadmissible to the United States for a period of 10 years since 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.

The officer-in-charge denied the waiver as a matter of law stating that the applicant had not established a legal marital relationship and therefore had not established the required qualifying family relationship. *Decision of the Officer-in-Charge*, dated September 22, 2004.

On appeal, counsel asserts that the applicant's spouse is suffering from surgical complications which necessitate the presence of the applicant. *See Attachment to Form I-290B*, undated.

The record includes, but is not limited to, an affidavit from the applicant's spouse, articles and information on Cote d'Ivoire, a petition in support of the applicant's spouse and medical records for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The officer-in-charge raised the issue of whether the applicant's spouse was already married when he married the applicant and found that she could not be classified as a spouse of a U.S. citizen for immigration purposes. *Decision of the Officer-in-Charge*, at 1. However, counsel has submitted evidence that the applicant's spouse divorced his previous wife before marrying the applicant, thereby enabling her to be classified as a spouse of a U.S. citizen for immigration purposes.

The record reflects that the applicant entered the United States with a visitor visa on or about September 1, 1996 and was authorized to stay until April 1997. The applicant departed the United States on or about April 1, 2002. Therefore, the applicant accrued unlawful presence from April 1997 until April 1, 2002, the date of departure from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(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)(i)(II) 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.

The relevant waiver provision is located in section 212(a)(9)(B)(v) of the Act.

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)(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 or parent of the applicant. 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 pursuant to section 212(i) of the Act. These factors are applicable to section 212(a)(9)(B)(v) waiver proceedings and 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 in the event that the applicant's spouse relocates to Cote d'Ivoire or in the event that he 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 Cote d'Ivoire. The applicant's spouse's family ties to the United States include his three children who are currently in the United States with him. *Affidavit of Applicant's Spouse*, at 2, dated January 20, 2006. The applicant's spouse asserts that his uncle was assassinated by government security forces in his hometown and his family is well-known as key members in the R.D.R. opposition party, therefore, he is a potential victim in the ongoing civil strife. *Id.* The record includes a newspaper article which details the

harassment by government security forces of the applicant's spouse's cousin in Cote d'Ivoire and his uncle's death. *Article from Le Front Newspaper*, dated March 3, 2005. The U.S. Department of State mentions that since the November 2004 violence, Cote d'Ivoire has been mostly quiet, although there have been episodes of violence in the western part of the country, and there is a risk of renewed conflict throughout the country with the security situation remaining tense and potentially volatile. *U.S. Department of State Travel Warning*, at 1, dated August 25, 2005. The record includes numerous articles detailing human rights, economic, security and social issues in Cote d'Ivoire as a result of the government versus rebel civil strife. Although the applicant's spouse is originally from Cote d'Ivoire, it appears that the country has changed significantly while he has been in the United States. Lastly, the record reflects that the applicant's spouse is an established college professor in New York and he would forego this position by relocating to Cote d'Ivoire. Based on the totality of the aforementioned facts, the AAO finds that extreme hardship has been established in the event that the applicant's spouse relocates to Cote d'Ivoire.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. A petition in support of the applicant's spouse states that he is compromised by the absence of his wife and his work is compromised. *Petition in Support of the Applicant's Spouse*, dated January 15, 2006. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. The record includes a letter stating that the applicant's spouse has residual numbness and sensitivity in his leg from reflex sympathetic dystrophy and a family member should live with him to assist him with daily routine matters. *Letter from [REDACTED]*, dated August 17, 2004. The applicant has not resided with her spouse since her departure in 2002. He has been working and dealing with daily routine matters since then. There is no evidence that her presence is required to assist him. In addition, the record reflects that two of the applicant's children are over the age of eighteen and may be able to assist him with daily routine matters. No other contentions are made regarding this prong of the analysis. After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse in the event that he remains in 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.