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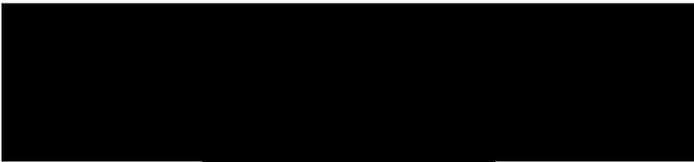
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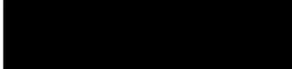
U.S. Citizenship
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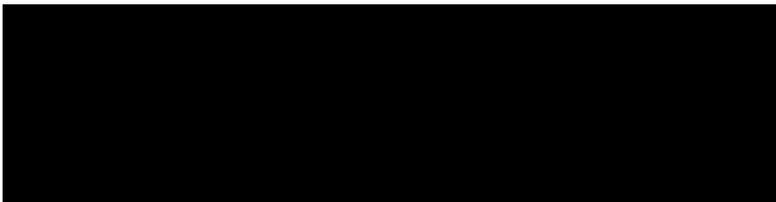
Date: AUG 17 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the California Service Center Director. 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 Trinidad 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 director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and/or parent. The application was denied accordingly. *Decision of the Director*, dated June 16, 2006.

On appeal, counsel asserts that the financial and familial burden on the applicant's spouse rises to the level of exceptional and extremely unusual hardship. *Counsel's Brief*, July 31, 2006.

In the present application, the record indicates that the applicant entered the United States with a visitor's visa on April 14, 1999 with an authorized period of stay until October 13, 1999. The applicant departed the United States in July 2004 and then re-entered the United States on Advanced Parole on July 12, 2004. Therefore, the applicant accrued unlawful presence from when his authorized period of stay expired on October 14, 1999 until April 22, 2004, when he filed his lawful permanent resident application. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.*

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 demonstrates that the applicant was unlawfully present in the United States for more than one year. In applying for permanent residence, the applicant is seeking admission within 10 years of his July 2004 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.

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 or parent of the applicant. Hardship the alien himself experiences or his child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 Trinidad or 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.

In this case the evidence submitted to establish extreme hardship includes counsel's brief, two statements from the applicant's spouse and a psychological evaluation.

The first part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states, in his brief, that the applicant's spouse is extremely fearful of the physical disruption to her family life that the applicant's inadmissibility will cause. *Counsel's Brief*, dated July 31, 2006. Counsel states that this fearfulness is made worse by the negative effect this disruption will have on the applicant's daughter. The applicant's spouse states that she and her daughter are suffering emotionally because of the applicant's inadmissibility and that she is very sad, anxious and cannot sleep at night. She reports that her anxiety has resulted in an increase in her blood pressure. The applicant's spouse also states that without the applicant's income she will not be able to afford health care and will be jeopardizing the safety of herself and her daughter. *Spouse's Statement*, undated. In support of the applicant's spouse's assertions regarding the hardships she is facing, counsel submitted a psychological evaluation from [REDACTED] a Licensed Clinical Social Worker. [REDACTED] interviewed the applicant and his family on July 20, 2006. [REDACTED] states that family cohesion is the main value in the applicant's family and that it is imperative that the family remain together in the United States. He asserts that the applicant's daughter suffers from speech and other developmental problems, including depression and separation anxiety. He finds that she desperately needs her father in the United States to help guarantee her stability, happiness, security, safety and family cohesion. *Psychological Evaluation*, dated July 22, 2006. [REDACTED] states that the applicant's spouse fears that the applicant's inability to live in their home in the United States will cause

irreparable emotional and psychological harm to their daughter. He states that the applicant's spouse will feel overwhelmed and alone without the emotional and financial help of the applicant. He also states that the applicant's spouse suffers from chronic anemia for which she is prescribed medications, she has recently seen blood in her urine and is set to have medical tests to determine if she has kidney or lung disease. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on one interview with the applicant's family. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. Moreover, [REDACTED] statements regarding the developmental problems of the applicant's daughter and the medical problems of the applicant's spouse are not supported with documentary evidence. The AAO finds that the record does not establish that the hardship claimed in relation to the applicant's spouse constitutes extreme hardship or that it exceeds what would normally be experienced upon the removal of a family member.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Trinidad. Counsel states that if the applicant's spouse relocates to Trinidad she will suffer economic hardship because Trinidad is a poor country with high unemployment and very little economic opportunities for women. *Counsel's Brief*, dated July 31, 2006. [REDACTED] states that in Trinidad the availability of physicians, that competent medical care in Trinidad is quite poor and that the general status and safety of women is quite poor. *Psychological Evaluation*, dated July 22, 2006. [REDACTED] also states that the applicant's spouse and daughter would face restrictions on their actions, family loss, employment limitations, possible poverty, a dangerous environment, corruption, healthcare and social service delivery scarcity, and academic deficits in Trinidad. *Id.* The AAO notes that no country conditions reports on Trinidad were submitted to support the claims of counsel and [REDACTED]. In addition, the record does not identify [REDACTED] as an expert on conditions in Trinidad. Thus, the AAO cannot find that the applicant's spouse would suffer extreme hardship if she relocated to Trinidad.

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, the record does not demonstrate that the hardship she would experience is greater than that typically encountered by individuals separated as a result of removal.

As the record fails to establish the existence of extreme hardship to the applicant's spouse, the applicant is statutorily ineligible for relief and 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.