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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

FILE:

Office: COLUMBUS, OH

Date:

APR 28 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio 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 Haiti 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 record failed to establish that the applicant's spouse, [REDACTED], would suffer extreme hardship if his waiver request were to be denied. *Decision of the Field Office Director*, dated November 29, 2007.

On appeal, the applicant submits additional evidence, including statements from N [REDACTED] and his daughter, as well as documentation of his mother's illness and 2003 death. *Form I-290B*, December 20, 2007.

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 field office director based her finding of inadmissibility under section 212(a)(9)(B)(i) of the Act on the applicant's accrual of unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act, until June 9, 1999, the date on which he filed his first Form I-485,

Application to Register Permanent Residence or Adjust Status. The applicant triggered the provisions of section 212(a)(9)(B)(i) of the Act when he left the United States on December 11, 2002 to visit his mother in Canada.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States on February 20, 1995 as B-2 nonimmigrant visitor and that he remained in the United States after August 19, 1995, the date on which his period of stay expired, until he traveled to Canada in December 2002. On June 9, 1999, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, based on the approved Form I-130, Petition for Alien Relative, filed on his behalf by [REDACTED]. The Form I-485 was denied by Citizenship and Immigration Services (CIS) on June 26, 2006. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (Secretary) as a period of authorized 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. Accordingly, the applicant accrued more than two years of unlawful presence, from April 1, 1997 until June 9, 1999, the date on which he filed the Form I-485. In applying for lawful permanent residence, the applicant is seeking admission within ten years of his 2002 departure and is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act .

At the time of filing, the applicant contended that, pursuant to CIS policy, he should not have been granted advance parole because he had already accrued unlawful presence at the time he submitted the Form I-131, Application for Travel Document, citing a November 26, 1997 memorandum issued by the legacy Immigration and Naturalization Service, "Advance Parole for Aliens Unlawfully Present in the United States for More than 180 Days." *See Memorandum by Paul Virtue, Acting Executive Associate Commissioner, Immigration and Naturalization Service*, dated November 26, 1997. The AAO notes that the 1997 memorandum indicated that, as a general rule, individuals who had accrued unlawful presence should not be given advance parole unless they appeared eligible for a waiver of inadmissibility. The memorandum did not, however, prohibit the issuance of advance parole to such individuals. Moreover, the memorandum made clear that a grant of advance parole did not confer any waiver of inadmissibility upon the alien and that an adjustment applicant who became inadmissible due to his or her departure from the United States was required to file the Form I-601 and establish extreme hardship to a qualifying relative, in accordance with applicable legal standards. The AAO also notes that the Form I-512, Authorization for Parole of an Alien into the United States, issued to the applicant in the present case included language informing him that, if he had accrued unlawful presence in the United States, he might be found inadmissible when he returned to the United States to resume the processing of his adjustment application.

Whether or not the applicant understood how his 2002 departure from the United States would affect his adjustment application, it does not alter the fact that he did depart the United States after accruing more than two years of unlawful presence and is currently inadmissible to the United States 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 other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is Ms. Austin.

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 if she resides in Haiti 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 [REDACTED] in the event that she relocates to Haiti. The record on appeal contains a November 19, 2007 statement from Ms. [REDACTED] in which she asserts that she does not feel it would be safe for her, her daughter or the applicant to return to Haiti. A statement from the applicant, also dated November 19, 2007, echoes these concerns. In support of Ms. [REDACTED] and the applicant's claims, the record includes a copy of the section on Haiti from the Department of State's Country Reports on Human Rights Practices – 2006, which indicates that the Haitian government's human rights record is poor, and lists the following human rights problems as having been reported during 2006: occasional extrajudicial killings by elements of the Haitian National Police; overcrowding and poor sanitation in prisons; occasional arbitrary arrests; prolonged pretrial detention; an inefficient judiciary subject to significant influence by the executive and legislative branches; severe corruption in all branches of government; ineffective enforcement of trade union organizing rights; ineffective measures to prevent violence and societal discrimination against women; child abuse and internal trafficking of children, and child domestic labor; and ineffective measures to address killings by members of gangs and other armed groups; and kidnapping, torture and cruel treatment by gang members and criminals.

The record also contains a psychological evaluation of [REDACTED] prepared by [REDACTED] licensed professional clinical counselor in Ohio. [REDACTED] reports that during the course of her interview with the applicant and Ms. [REDACTED], the applicant described the impacts of moving to Haiti on his wife and daughter. Ms. [REDACTED] indicates that the applicant informed her that Haiti is a poor country and that if [REDACTED] and his daughter were to move to Haiti, they would be negatively affected. The applicant further stated to [REDACTED] that he would worry for [REDACTED] and his daughter's safety if they lived in Haiti and that his daughter would not have the lifestyle she has in the United States. The applicant also informed [REDACTED] that jobs in Haiti are scarce, that he and his family would live in poverty and that, as schools in Haiti are not free, his daughter would not be able to complete her education. The applicant further pointed to the absence of a good health care system in Haiti and the effect that this would have on his daughter's health.

Having reviewed the country conditions information included in the Department of State report and the statements made by the applicant during his interview with [REDACTED] the AAO concludes there is insufficient evidence in the record to establish that [REDACTED] would suffer extreme hardship if she relocated to Haiti with the applicant. While the AAO notes the overview of the poor human rights situation in Haiti provided by the Department of State, this general discussion of human rights abuses does not demonstrate that [REDACTED], as a U.S. citizen, would be likely to suffer such abuses were she to live in Haiti. The statements made by the applicant concerning the poverty and security risks that would face [REDACTED] in Haiti are also generic in nature and, further, are not supported by any documentary evidence. 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)). Accordingly, the record does not provide sufficient evidence to establish that [REDACTED] would suffer extreme hardship if she relocated with the applicant to Haiti.

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. In her statements of November 19 and December 18, 2007, [REDACTED] asserts that she would experience extreme hardship if the applicant is returned to Haiti because he cares for their daughter while she is at work. [REDACTED] also asserts that she would find it difficult to pay the bills, and buy food, and clothing and supplies for her daughter in the applicant's absence. She also notes that the applicant assists her father who is disabled by Parkinson's Disease, taking him wherever he has to go. [REDACTED]

contends that she feels great stress and spent days crying after receiving the field officer director's denial of the Form I-601. She notes that the applicant works hard, has never been in trouble with the law, always wants to do the right thing and is very supportive of his family. [REDACTED] notes that her daughter loves her father very much and that the thought of his removal to Haiti is breaking her heart.

To establish the emotional impact of his removal on [REDACTED], the applicant, as previously noted, has submitted a psychological evaluation prepared by [REDACTED]. Ms. [REDACTED] reports that [REDACTED]'s stress over the potential removal of the applicant has resulted in chronic pain in her upper back and neck. She also indicates that [REDACTED] is currently focused on the family's financial situation as the applicant is not working and she is the sole provider. While [REDACTED] reports that [REDACTED] is suffering from some depressive symptoms as it relates to the applicant's situation, she does not diagnose her as being symptomatic of anxiety or depression. Ms. [REDACTED] concludes only that should the applicant be removed, [REDACTED] would have a "good chance of becoming very depressed."

The AAO acknowledges that [REDACTED] would experience hardship if the applicant were removed from the United States and she did not accompany him to Haiti. 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 inadmissibility. Although [REDACTED] states that she would face financial hardship if the applicant were removed, the psychological evaluation prepared by [REDACTED] reports that she is already the sole financial provider for her family as the applicant is not working. While [REDACTED] notes the emotional stress and sadness that she has felt since the applicant's waiver request was denied, [REDACTED]'s evaluation does not report that her emotional reactions are beyond those normally experienced by a spouse in her situation.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of 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 does not find the applicant to have established that [REDACTED] would face extreme hardship if his waiver request were denied and she remained in the United States.

The AAO notes the statements made by [REDACTED] concerning the impact that the applicant's removal would have on their daughter. However, as previously discussed, the hardships experienced by the applicant's daughter as a result of relocation or separation are not relevant to the consideration of extreme hardship in this proceeding, except as they affect [REDACTED], the only qualifying relative. [REDACTED]'s evaluation indicates that the chances of the applicant's daughter developing serious depression would be high if the applicant were to be removed from the United States, but does not address how the possible depression experienced by [REDACTED]

daughter would affect her mother. Accordingly, as the record does not establish how the emotional hardship to be experienced by the applicant's daughter would affect [REDACTED], the AAO will not consider this aspect of the applicant's claim to extreme hardship.

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.