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U.S. Citizenship  
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FILE: [REDACTED] Office: ACCRA, GHANA

Date: **AUG 12 2008**

IN RE: Applicant: [REDACTED]

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:

[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.

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 Acting Officer in Charge, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who procured entry into the United States with a valid K-1, Fiancée Visa, on July 29, 1998, with permission to remain until October 28, 1998. Pursuant to K-1 regulations, the applicant was required to marry the petitioner of the Form I-129F, Petition for Alien Fiancée, within 90 days of entry. The applicant did not marry the petitioner. On August 27, 2000, the applicant married another individual, also a U.S. citizen. The applicant was subsequently placed in removal proceedings, as it has been determined that as the applicant had not married the petitioner of the K-1 and thus, he was not eligible to adjust status based on his marriage to a U.S. citizen. Pursuant to a voluntary departure order, dated January 13, 2006, the applicant departed the United States in May 2006.

The applicant accrued unlawful presence from October 29, 1998 until the filing of his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on April 6, 2001, and again from May 8, 2001, the date of the denial of his Form I-485, until his re-filing of the Form I-485 on July 27, 2005, and again, from March 2, 2006, the date of the denial of the second Form I-485, until his departure in May 2006, a period in excess of one year. The applicant was thus found to be inadmissible to the United States under 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.<sup>1</sup> He 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 be able to return to the United States to reside with his U.S. citizen spouse.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated September 11, 2006.

On appeal, counsel submits a brief; two letters from the applicant with referenced attachments; evidence of the applicant's removal proceedings; medical documentation relating to the applicant's spouse; an affidavit from the applicant's spouse, dated November 3, 2006; bills relating to the applicant and his spouse; and evidence of the applicant's spouse's disability. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> The applicant does not contest the acting officer in charge's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

(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 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 United States 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 first step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would experience extreme hardship if she relocated to Ghana to reside with the applicant. No documentation has been provided by counsel, the applicant, and/or his U.S. citizen spouse with respect to this criterion. As such, it has not been established that the applicant’s spouse will experience extreme hardship were she to relocate abroad to reside with the applicant in Ghana, or any other country of their choosing, based on the applicant’s removal from the United States.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or

prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. As asserted by the applicant,

...My wife’s condition is getting worse. At the moment she is disabled and had been provided with a disabled persons parking ticket to help with her parking in public places. She is obese; she became obese as a result of the medication she was on. For this reason the doctor took her off the medication. I was helping her reduce weight:

- 1) Helping with her workout at home.
- 2) Walking with her around the area.
- 3) Setting targets for her to meet and encouraging her.

She is not comfortable walking around the area on her own because it is a very quiet area. I help her with her medical appointments and visits to specialist. There are times when she would leave the house in a stable condition and would come home from work worse off. Her legs would be swollen to the extent that her shoes would not fit her anymore. In a situation like this she can not move around. Therefore, I had to do the most things for her because she would be in pain. There are times, which is regular that she would be struggling for air. This happens mostly at night. She has an air machine that I set up and put it on her and monitor.

At the moment her doctor has recommended that she goes on disability. She does not want to, because she feels she is too young to be going on disability. Also she does not want to be a burden to the state. With my support she can continue to work longer.... My presence in the United States is vital to her health. My wife’s condition is not improving so it is imperative that I should be with her....

Letter from [REDACTED], dated October 10, 2006.

The applicant’s spouse further elaborates on the hardships she would face if her husband is unable to reside in the United States,

...I am a very sick person, and [REDACTED] [the applicant] has been and is the strongest support and assistance in helping me cope and manage my many health

problems. I have serious life-threatening illnesses, including sarcoidosis, a serious lung disease, sleep apnea and borderline diabetes, which require considerable care and attention, which [REDACTED] has been providing me. My children and I heavily depend on my husband for my well being and his support.... My medical condition is an unstable one that can turn for the worst at anytime. At present, I have been diagnosed with three other serious conditions since [REDACTED] departure. Therefore, there is a noticeable decline in my health and mobility, which goes well beyond emotional and financial assistance. He helps me with my health condition, my sanity and my children's well-being through it all.

Further, the financial assistance provided by [REDACTED] is not negligible either. We do not have just common expenses, especially due to my health condition which requires constant medical attention, a special diet and other special consideration and care.

My husband and I have been married for over six years. We love each other and have gone through so much together. It is unbearable for me to have to go through everything all alone now. I need him as my husband by my side.... I would not be able to hold it together much longer without him by my side....

*Affidavit for [REDACTED], dated November 3, 2006.*

[REDACTED] M.D. confirms the above statements regarding the applicant's spouse medical condition. As [REDACTED] states,

...Mrs. [REDACTED] [the applicant's spouse] has multiple medical problems that require ongoing fairly complex medical management. These problems include sarcoidosis with dyspnea on exertion, arthritis, obesity, obstructive sleep apnea, glaucoma, peripheral neuropathy and dependent edema. She sees a rheumatologist, pulmonologist, neurologist, cardiologist, ophthalmologist, orthopedic surgeon, as well as me, her family medicine physician....

*Letter from [REDACTED], Convenient Health Care, dated November 2, 2006.*

Due to the applicant's spouse's grave medical situation, including the diagnosis of Sarcoidosis, an incurable disease, the physical, emotional and psychological stress associated with her medical conditions and the limitations that said conditions place on her, and the fears and anxieties associated with living with a lifelong and incurable illness without the constant support and presence of her husband, the AAO finds that the applicant's inadmissibility would cause the applicant's spouse physical, financial, emotional and psychological hardship that would be significantly beyond that normally suffered upon the separation of families. The applicant's spouse needs her husband's support on a day to day basis.

The AAO concludes that the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Although it has been established that the applicant's spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad based on his inadmissibility, it has not been established that the applicant's spouse is unable to relocate abroad to reside with her husband due to his removal from the United States. Although CIS is not insensitive to her situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.