



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 02 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 application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The record reflects that the applicant is a native and citizen of Ghana. The applicant 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. The applicant presently seeks a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The director determined the applicant had failed to submit evidence to establish that a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (I-601 Application) was denied accordingly.

On appeal the applicant indicates, through counsel, that the denial of his I-601 application will cause extreme hardship. The applicant indicates that he has no immediate relatives in Ghana, and that most of his immediate family lives in the United States.

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

[A]ny alien (other than an alien lawfully admitted for permanent residence) who –

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- (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 record reflects that the applicant entered the United States unlawfully in May 1999. The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485) on December 27, 2001. The applicant departed the U.S. in April 2002. He was paroled into the United States on April 28, 2002.

Because the applicant was unlawfully present in the United States for more than one year (between his arrival in May 1999 and the proper filing of a Form I-485 on December 27, 2001) prior to his departure from the United States, he is subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act related to unlawful presence.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 applicant does not claim to be married. He indicates on his I-601 application, however, that his father is a U.S. citizen and that his mother is a lawful permanent resident. The applicant provides no corroborative evidence to demonstrate the immigration status of his parents, and he provides no evidence to demonstrate that a qualifying relative would suffer extreme hardship if his I-601 application is denied.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals (Board) held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

On appeal, the applicant asserts that the denial of his application will cause undue hardship because, with the exception of one brother, his entire family is in the United States, and because his father, mother and sister are in the United States and he has no immediate relatives in Ghana. The applicant makes no other assertions on appeal.

The AAO notes that the applicant failed to provide any corroborative evidence to establish his parents' immigration status in the United States, or to demonstrate that his parents are qualifying relatives for I-601 application purposes. Moreover, the applicant has made no specific assertions of hardship to either of his parents, and he failed to demonstrate that his mother or father would suffer hardship beyond that normally experienced upon the departure of a family member, if the applicant's I-601 application were denied.

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that a qualifying relative would suffer extreme hardship if he were denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.