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MAIL STOP 2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: OCT 30 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who, pursuant to the record, admitted on September 4, 2003 to the interviewing officer that she had entered the United States without inspection in May 1990 and had remained until February 2000, when she voluntarily departed the United States. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in February 2000. 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. She 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 reside in the United States with her lawful permanent resident spouse.

The district director 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated February 5, 2005.

The following documents were submitted in support of the appeal: a letter from the applicant, dated March 2, 2005; a letter from the applicant's spouse, dated October 22, 2003; medical documentation with respect to the applicant's child; and a copy of the applicant's child's U.S. birth certificate. The entire record was reviewed and considered in rendering this decision.

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…

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

To begin, the record contains numerous references to the hardship that the applicant's child, , born in August 1997, will suffer if the applicant's waiver request is denied. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's lawful permanent resident spouse is the only qualifying relative, and hardship to the applicant or their U.S. citizen child cannot be considered, except as it may affect the applicant's spouse.

To establish extreme hardship were the applicant removed due to her inadmissibility, the applicant's spouse asserts as follows,

> My wife, [the applicant] and I have been together for sixteen (16) years. **She is my life's partner and mother of our six- (6) year old son.** Our son was born in this country and we have built a family unit in which our son is socially, emotionally and academically well adjusted.
>
> I grew up in a one-parent home and I have no intention of this happening to my family.... She [the applicant] is my best friend and confidant who is an encouraging force in my life. is a great wife and mother that we would be lost without.
>
> As a resident who has a successful business that provide a source of income for me to take care of my family, it is important that my family structure stay as it is....

Letter from dated October 22, 2003.

To begin, no documentation has been provided that corroborates the hardships the applicant's spouse will encounter were his wife to relocate abroad due to her inadmissibility. Although the applicant references the

fact that he runs a successful business, it has not been established that without the applicant's presence, his business will suffer to the point of causing extreme financial hardship to the applicant's spouse. Moreover, although the applicant's spouse references his dependence on the applicant as an encouraging force, no letter from a mental health professional has been provided to establish that the applicant's relocation abroad would cause the applicant's spouse extreme emotional and/or psychological hardship. Finally, although a reference is made to the fact that the applicant's child was diagnosed with a hernia in 2004 and will need post-operative care, no documentation from a medical professional has been provided that establishes that without the applicant's spouse's presence, the child will suffer, thereby causing extreme hardship to the applicant's spouse, the only qualifying relative in this case.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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 familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th 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).

In regards to the applicant's child's daily care, the AAO notes that the applicant appears to be the primary caregiver for the child. As she states, "I have cared for him [the applicant's child] and raised him from birth. He is dependent on me for all his needs.... I have consistently nurtured and cared for him since birth.... My son is completely dependent on me for everything...." *Letter from* [redacted] dated March 2, 2005. No reference is made by the applicant and/or her spouse to what specific involvement the applicant's spouse has in relation to their child. As such, it has not been established that the applicant's spouse would suffer extreme hardship were his child to relocate to Jamaica with the applicant while the applicant's spouse remains in the United States. Nor has it been established that the applicant's spouse would be unable to travel to Jamaica, his native country, on a regular basis to visit with his wife and child. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

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, with or without his child, is typical to

individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not established that the applicant's spouse will suffer extreme hardship were the applicant to relocate abroad, with or without their son, due to her inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, counsel has not established that the applicant's spouse would suffer extreme hardship were he to relocate to Jamaica, his home country, to reside with his wife and child.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship if she were not permitted to reside in the United States, and moreover, the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship were he to relocate to Jamaica to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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.