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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO Date:

JUN 01 2009

IN RE:

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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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago. 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 Jamaica 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated August 10, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship should the applicant be prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated September 8, 2006.

The record contains statements from counsel; statements from the applicant's wife; a statement from the applicant's sister; medical documentation for the applicant's mother; copies of bills for the applicant's household in the United States; tax and employment records for the applicant and his wife; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a copy of the applicant's wife's birth certificate, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

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 reflects that the applicant entered the United States in H-2B status on March 5, 2002 with authorization to remain until September 9, 2002. He did not depart by September 9, 2002, and the record does not reflect that he filed an application to extend his status. On June 30, 2005, the applicant married his U.S. citizen wife. The applicant filed a Form I-485 application to adjust his status to permanent resident on September 29, 2005, pursuant to his marriage to a U.S. citizen. The applicant applied for and received an advance parole document on December 12, 2005, and he departed the United States. The applicant reentered the United States using his advance parole document on December 20, 2005.

Based on the foregoing, the applicant accrued approximately three years of unlawful presence in the United States, from the date his H-2B status expired on September 9, 2002 until he filed his Form I-485 application on September 29, 2005. As the applicant departed the United States and returned after this period of unlawful presence, he was properly deemed inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

On appeal, counsel asserts that the applicant's wife will suffer extreme hardship should the applicant be prohibited from remaining in the United States. *Statement from Counsel on Form I-290B* at 1. Counsel references the applicant's wife's statements, and contends that that the applicant's wife has

had difficulty maintaining employment while pursuing an education. *Brief from Counsel*, at 3, dated October 6, 2006. Counsel states that the applicant's wife was able to meet her needs with difficulty prior to marrying the applicant. *Id.* Counsel contends that the applicant's wife has a position with a temporary employment agency, but that it could end at any time. *Id.*

Counsel stated that the applicant's wife has also petitioned for the applicant's son to enter the United States as an immigrant, and that if his son comes to the United States without the applicant present, the applicant's wife will experience additional hardship. *Id.* at 4.

Counsel states that the applicant's wife intends to relocate to Jamaica with the applicant should the present waiver application be denied. *Id.* Counsel asserts that the applicant's wife would face difficult conditions in Jamaica, including a lack of employment opportunities and quality medical care. *Id.* Counsel provides that the applicant's wife would have few opportunities to work in her field as a phlebotomist. *Id.* Counsel explained that the applicant's sister has a degree in accounting, yet she is only able to find work as a postal clerk in Jamaica. *Id.* Counsel notes that the applicant's wife has no family ties in Jamaica. *Id.*

Counsel contends that the applicant's stepchildren, ages 14 and 11, would experience hardship due to relocating to Jamaica, which would create an emotional burden for the applicant's wife. *Id.* Counsel asserts that the applicant's stepson suffers from asthma, and that he would have difficulty obtaining proper medical care in Jamaica. *Id.* at 5.

The applicant's wife explained that she works for a temporary agency as a phlebotomist at a rate of \$220 per week, and that she has been unable to secure a permanent position. *Statement from the Applicant's Wife*, undated. The applicant's wife stated that she does not presently receive child support from either father of her two children, and that the applicant is the only father figure in their lives. *Id.* at 1.

The applicant's wife explained that she does not plan to be separated from the applicant, and that she will relocate to Jamaica should the applicant be compelled to depart. *Id.* at 1-2. She described the rustic conditions in which her mother-in-law lives and works in Jamaica, and she asserted that she and her children would be compelled to reside in harsh conditions there. *Id.* at 2.

The applicant's wife stated that she would take a full-time job if offered one. *Id.* She provided that her rent is \$800 per month, but that she only earns \$880 per month. *Id.* She stated that her gas bill is \$200 to \$300 per month in the Winter, and her electric bill is approximately \$70 per month. *Id.* at 3. She noted that she and her children require other necessities. *Id.* She indicated that she was a part-time student and worked part-time from November 2004 to June 2005. *Id.* at 2.

The applicant's wife previously expressed that she is close with the applicant. *Prior Statement from the Applicant's Wife*, undated. She noted that the applicant assists her son with asthma treatments in the mornings so that she can work and continue her education. *Id.* at 1.

The applicant's sister explained that conditions have been challenging in Jamaica for her and her family. *Statement from the Applicant's Sister*, dated September 5, 2006. She stated that she has had difficulty finding suitable employment or receiving effective medical care. *Id.* at 1.

The applicant's mother described the harsh economic conditions she has faced in Jamaica. *Statement from the Applicant's Mother*, dated September 5, 2006. She described the difficulty she and her children have had with employment. *Id.* at 2. She indicated that most people do not have health care in Jamaica. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from remaining in the United States. The applicant has not shown that his wife would experience extreme hardship should she remain in the United States and the applicant depart. The applicant's wife indicated that she intends to relocate to Jamaica to maintain family unity should the applicant return there. However, as a U.S. citizen, the applicant's wife is not required to reside outside the United States due to the applicant's inadmissibility.

The record reflects that the applicant's wife is capable of earning sufficient income to meet her and her two children's needs in the United States. As noted by the district director, the applicant's wife supported herself and her children prior to marrying the applicant. The applicant's wife stated that she has been unable to secure a full-time position in her chosen field, and that she works in a temporary position. Yet, the applicant has not shown that his wife is unable to work in another field of endeavor to meet her needs until she attains the position of her choice. The applicant's wife indicated that she has had difficulty working while completing education. Yet, the applicant has not asserted or shown that his wife is unable to receive student loans to relieve her economic requirements. Nor has the applicant provided explanation or documentation to show that his wife requires additional education to work in her field. While the AAO appreciates the challenges associated with acting as a single mother, the applicant has not shown that his wife would face economic challenges that rise to the level of extreme hardship should she remain in the United States.

The applicant's wife expressed that she is close with the applicant and that she does not wish to be separated from him. The AAO acknowledges that family separation often creates significant emotional hardship. Yet, separation is a common result of inadmissibility. U.S. court decisions have 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 applicant has not shown by a preponderance of the evidence that the emotional

hardship to his wife can be distinguished from that which is expected when families are separated due to inadmissibility.

The record contains references to hardships to the applicant's children. Specifically, the applicant's wife stated that her children are close with the applicant, and that they would endure emotional hardship if separated from him. The applicant's wife further indicated that the applicant assists her son with his asthma treatment in the mornings. Direct hardship to an applicant's children is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not established that his stepson would be unable to continue any required asthma treatment in his absence. The applicant has not shown that his children would experience consequences that elevate his wife's hardship to extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife would experience extreme hardship should she remain in the United States and he depart. In order to show eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, the applicant must show that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) of the Act. As he has not shown that she would experience extreme hardship should she remain in the United States, the applicant has not shown that denial of the waiver application would result in extreme hardship. Section 212(a)(9)(B)(v) of the Act.

The record contains explanation of hardships the applicant's wife would endure should she relocate to Jamaica. The AAO acknowledges that conditions in Jamaica can be difficult, and that the applicant's wife would likely face economic challenges due to a lack of employment opportunities. The AAO has given due consideration to the financial challenges the applicant's family members have described in Jamaica. However, while it is reasonable to expect that the applicant's wife would endure a lower standard of living in Jamaica, the applicant has not shown by a preponderance of the evidence that his wife would be unable to meet her needs there.

As discussed above, it is reasonable to assume that the applicant's wife would share in any emotional hardship her children would face in adapting to life in Jamaica. However, as English is spoken in Jamaica, it is assumed that the applicant's stepchildren would not face significant language obstacles. While the applicant's stepson has asthma, the applicant has not shown that his stepson would be unable to continue any necessary treatment there, such as the daily use of a nebulizer. The AAO acknowledges that adapting to an unfamiliar culture presents significant challenges. Yet, the applicant has not established that his stepchildren would face a degree of hardship that would elevate the applicant's wife's challenges to extreme hardship.

Based on the foregoing, the applicant has not shown that his wife will experience extreme hardship should she relocate to Jamaica to maintain family unity. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.