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ADMINISTRATIVE APPEALS OFFICE
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WASHINGTON, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY Date: MAR 05 2009
(PTS 2006546012 relates)

IN RE: [redacted]

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, Mexico City. 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 Trinidad and Tobago 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 her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated November 15, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband paid a $1000 fee to waive the applicant's entry to the United States without inspection, thus the applicant should have been permitted to adjust her status to permanent resident. *Statement from Counsel*, dated August 1, 2008. The applicant's husband indicated he wishes to be reunited with the applicant. *Statement from Applicant's Husband*, dated August 11, 2006.

The record contains statements from counsel; a statement from the applicant's husband; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate; a copy of a birth record for the applicant, and; documentation in connection with the applicant's application for an immigrant visa at the U.S. Embassy in Port of Spain, Trinidad and Tobago. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 without inspection in or about 1995. She remained until approximately 2006. Thus, the applicant began accruing unlawful presence on April 1, 1997, the date the unlawful presence provisions in the Act took effect. As she remained until approximately 2006, she accrued approximately eight years of unlawful presence in the United States. On May 1, 2006, she applied for an immigrant visa at the U.S. Embassy in Port of Spain, Trinidad and Tobago. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her 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 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, the applicant's husband indicated he wishes to be reunited with the applicant. *Statement from Applicant's Husband* at 1. He explained that he and the applicant married on April 9, 2001, and that they have a very cordial and loving relationship. *Id.* He stated that:

> [A]s I was advancing in years and having met [the applicant], I decided that I would have someone who would care for me in the event of bad health and, also, prepare my foods and take care of the household which [the applicant] has been doing for me since our marriage.

Id. He indicated that he would be deprived of the applicant's company, companionship, and care should she be prohibited from entering the United States. *Id.*

Counsel asserts that the applicant's husband paid a $1000 fee to waive the applicant's entry to the United States without inspection, thus the applicant should have been permitted to adjust her status to permanent resident. *Statement from Counsel*, dated August 1, 2008.

Upon review, it is first noted that there is no provision in the Act that allows an applicant to pay a $1000 fee to waive inadmissibility under section 212(a)(9)(B)(i)(II). Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is triggered when an applicant accrues over one year of unlawful presence, departs the country, and seeks reentry. Had the applicant remained in the United States after she accrued unlawful presence, she may have been eligible to adjust her status to permanent resident.

Section 245(i) of the Act allows certain aliens to file for adjustment of status upon payment of a penalty fee of $1,000, even though some of the conditions required by section 245(a) and (c) of the Act are not met. Aliens in the United States who have an immigrant visa immediately available, but who entered the United States without inspection, remained in the United States past the period of admission, worked unlawfully, or are otherwise ineligible for adjustment of status under section 245(c) of the Act may submit Form I-485 Supplement A along with Form I-485, Application to Register Permanent Residence or Adjust Status. However, submission of Form I-485 Supplement A with a $1000 fee does not waive inadmissibility under section 212(a)(9)(B)(i)(II) of the Act once an applicant has departed. Accordingly, the applicant's payment of $1000 did not waive her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant's husband expressed that he shares a cordial and loving relationship with the applicant, she performs domestic tasks for him, and he wishes to be reunited with her. Yet, the applicant has not submitted explanation or evidence to show that, should she remain outside the United States, her husband will experience hardship that is greater than that which is commonly expected when spouses are separated due to 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 asserted or shown that her husband would experience economic hardship should the present waiver application be denied. The applicant has not established that her husband is unable to perform the household tasks she has performed for him. The record does not contain references to other possible hardships the applicant's husband may experience due to her absence from the United States.

Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should she be prohibited from entering the United States and he remain.

The applicant has not asserted or shown that her husband would experience hardship should he join her in Trinidad and Tobago to maintain family unity. The record contains no explanation of hardship the applicant's husband may endure should he relocate abroad. Thus, the applicant has not shown that her husband would experience extreme hardship should he reside outside the United States.

The elements of hardship presented by the applicant have been considered individually and in the aggregate. Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband. Section 212(a)(9)(B)(v) of the Act. 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)(v) 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.