

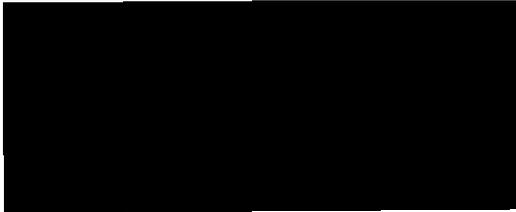


U.S. Citizenship
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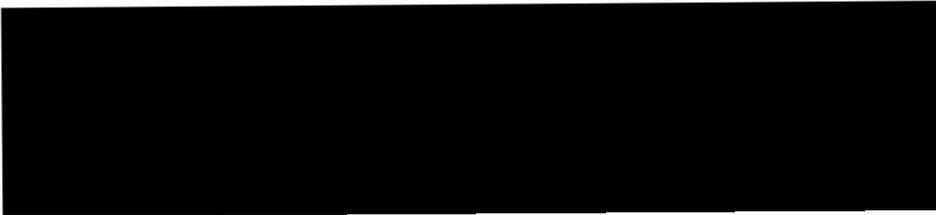


FILE: [REDACTED] Office: PORT-AU-PRINCE, HAITI Date: **JUL 28 2009**

IN RE: [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 PETITIONER:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Port-au-Prince, Haiti, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti who was 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 a period of one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant 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).

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated March 1, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if the applicant were denied admission to the United States due to her medical condition and difficulty having to raise and financially support three children without the assistance of the applicant. *See Brief in Support of Appeal* at 4-5. Counsel further asserts that due to her length of residence in the United States and lack of ties to Haiti, social and economic conditions in Haiti, and the effects of relocation on her three U.S. Citizen children, the applicant's wife would suffer extreme hardship if she relocated to Haiti. *Brief* at 5-7. In support of the waiver application and appeal, counsel submitted medical records for the applicant's wife and a letter from her physician's office, information on hyper coagulation, and a letter from the applicant's wife. The entire record was reviewed and considered in arriving at 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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 [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 AAO notes that the record contains several references to the hardship that the applicant's wife's children would suffer if the waiver application is denied. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child and stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998)

(citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). 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).

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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 the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Haiti who resided in the United States from February 2002, when he entered without inspection, to November 2005, when he departed after being ordered removed by an immigration judge. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from February 2002 until he filed an application for asylum on September 15, 2003. He is also inadmissible under section 212(a)(9)(A)(i) of the Act because he is seeking admission within ten years of his removal from the United States. The record further reflects that the applicant’s wife is a thirty-three year-old native of Haiti and citizen of the United States. The applicant currently resides in Haiti and his wife and their children reside in North Miami, Florida.

Counsel asserts that the applicant’s wife is suffering extreme hardship due to being separated from the applicant and having to raise three children without his assistance. Specifically, counsel states that the applicant's wife suffers from Hyper coagulate State disease, a condition that can be life-threatening, as well as various other ailments, and needs the applicant to provide her support and assistance and help with their children. *Brief* at 4. In support of these assertions counsel submitted a letter from the office of her treating physician that states that she has been diagnosed with Hyper coagulate State, has had eight deep vein thrombosis events, and has various other medical problems. *See Letter from [REDACTED] dated March 23, 2007*. The letter further states that the applicant’s wife needs to undergo gastric bypass surgery for her health, but has postponed the surgery because the applicant is not present and she will need a 24-hour adult caregiver. *Id.* The letter further states, “It is imperative that she has a care giver. Her prognosis is poor. She will benefit by having her husband at her side.” *Id.*

Information from the website Always-Health.com submitted with the appeal further indicates that hyper coagulation can be “very dangerous as well as life threatening” because the excessive clotting of the blood usually takes place in the veins that carry blood to the heart and can result in pulmonary embolism, stroke, or heart attack. Medical records submitted with the appeal as well as a letter from the applicant’s wife indicate that she has been prescribed blood thinners for her condition. The applicant’s wife further states, “Right now I have [an] intravenous ulcer . . . When that happens the doctor usually ask (sic) me to stay off the legs so it can close back up. It’s hard for [me] to stay home because I’m the only one working and the bills must be paid.” *Letter from* [REDACTED] dated August 18, 2006.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letter from the physician’s office where the applicant’s wife receives treatment states that she suffers from Hyper coagulate State and has had several deep vein thrombosis events. Medical records submitted with the appeal indicate that she has had one pulmonary embolism. The evidence submitted also indicates that the applicant’s wife is in need of gastric bypass surgery for her health and cannot have this procedure without a full-time caregiver. The applicant’s wife further states that she must stay off her feet at times due to her condition, which is difficult in the applicant’s absence because she must work and care for her three children. The evidence on the record establishes that the applicant’s wife’s medical condition is serious and that she needs the applicant to provide her with assistance and financial support. In light of her medical condition and the emotional hardship that would result from being separated from the applicant, it appears that the applicant’s wife is suffering emotional, physical, and financial hardship that, when considered in the aggregate, would rise to the level of extreme hardship if the applicant is denied admission to the United States.

Counsel asserts that the applicant’s wife and their children would suffer extreme hardship in Haiti due to their lack of ties to the country and limited understanding of Creole, as well as social, political, and economic conditions there. Counsel did not submit documentation to support these assertions, but made reference to the U.S. State Department Country Reports on Human Rights Practices for 2006, which provides an overview of human rights violations as well as issues such as violence and societal discrimination against women, crimes committed by gangs and other armed groups, and lack of access to education. *See Brief* at 6. In addition, the AAO takes notice of a recent Travel Warning issued by the Bureau of Consular Affairs of the U.S. Department of State. The warning states,

The State Department warns U.S. citizens of the risks of travel to Haiti and recommends deferring non-essential travel until further notice. . . . Travelers are strongly advised to thoroughly consider the risks before traveling to Haiti and to take adequate precautions to ensure their safety if traveling to Haiti.

In late August and September 2008, heavy rains and gale-force winds from hurricanes Fay, Gustav, Hanna, and Ike pelted the country's coastline and interior causing heavy

flooding and mudslides. In the aftermath of the storms, eight of the country's nine departments reported significant physical and economic devastation. The storm damage came on the heels of the civil unrest in April 2008. . . .

U.S. citizens traveling to and residing in Haiti despite this warning are reminded that there also is a chronic danger of violent crime, especially kidnappings. . . . As of January 2009, 25 Americans were reported kidnapped in 2008. Most of the Americans were abducted in Port-au-Prince. Some kidnap victims have been killed, shot, sexually assaulted, or brutally abused. The lack of civil protections in Haiti, as well as the limited capability of local law enforcement to resolve kidnapping cases, further compounds the element of danger surrounding this trend.

Travel is always hazardous within Port-au-Prince. U.S. Embassy personnel are under an Embassy-imposed curfew. . . . The Embassy restricts travel by its staff to some areas outside of Port-au-Prince because of the prevailing road and security conditions. *U.S. Department of States, Travel Warning – Haiti*, January 28, 2009.

The AAO finds that the applicant's wife, who has been a U.S. Citizen since December 15, 2004, has resided in the United States since 1983, and whose parents are deceased, would suffer extreme hardship if she relocated to Haiti due to her lack of ties to the country as well as the destruction caused by hurricanes in 2008, poor economic conditions, and the high level of violent crime.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine

whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant’s immigration violations, entering the country without inspection and remaining unlawfully in the United States.

The favorable factors in the present case are the hardship to the applicant’s wife and his children if he is denied admission; the applicant’s lack of a criminal record or additional immigration violations; his family ties in the United States; and his employment history while he resided in the United States, as noted on information provided with the Petition for Alien Relative filed on his behalf.

The AAO finds that the applicant’s violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained. The field office director shall reopen the denial of the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212), which was denied with the waiver application, and continue processing that application.

ORDER: The appeal is sustained.