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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6

FILE:

Office: CHARLOTTE, NC

Date: APR 23 2010

IN RE:

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:

SELF-REPRESENTED

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Charlotte, North Carolina. 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 Gambia 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, at 2, dated November 9, 2009.

On appeal, the applicant states that the field office director failed to give appropriate weight to his spouse's affidavit, erroneously concluded that his spouse had failed to submit documentation of a disability, and erred in considering financial hardship. He requests that the AAO consider his spouse's affidavit and physician's statement. *Form I-290B*, at 2, received December 9, 2009.

The record includes, but is not limited to, the applicant's spouse's statement, a statement from the applicant's spouse's children, financial documents for the applicant and his spouse, and a physician's note for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States as a B-2 visitor on April 27, 2003, his authorized period of stay expired on May 30, 2003, and he departed the United States on or about March 20, 2006. The applicant accrued unlawful presence from May 31, 2003, the day after his authorized period of stay expired, until March 20, 2006, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his March 20, 2006 departure.

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.

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 would result in extreme hardship for the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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. These factors include the presence of 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Gambia or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Gambia. The record includes a physician's note stating that the applicant's spouse has uncontrolled Type 2 diabetes-insulin dependent and uncontrolled hypertension. *Note from* [REDACTED], dated December 2, 2009. The record does not document how the applicant's spouse's medical conditions affect her ability to function or establish that she would be unable to receive adequate medical care in Gambia. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). There are no other hardship factors presented in regard to this prong of the analysis. The record lacks sufficient documentary evidence of emotional,

financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Gambia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that it would be a real disaster for the family if the applicant were forced to leave the United States; there would be incalculable emotional distress to her and to her children, who look to the applicant as a father figure; the assistance that the applicant brings home is substantial; she could be forced to go on the public rolls without his assistance, which would be very depressing and bad for her self-esteem; her diabetic condition would be exacerbated due to the pressures of forced separation; the deep sense of loss would be bad for her mental state; and separation would irreparably harm her. *Applicant's Spouse's Statement*, at 1, dated October 2, 2009. The applicant's spouse's children state that their family would be in a situation if the applicant were found to be inadmissible as they have a wonderful family bond with him, they look up to him like a father, he treats their mother like a true husband, and he is always there for them in all aspects and makes them happy. *Applicant's Spouse's Children's Statement*, undated.¹ The record includes a physician's note stating that the applicant's spouse has uncontrolled Type 2 diabetes-insulin dependent and uncontrolled hypertension. *Note from [REDACTED]* The record includes numerous bills for the applicant and his spouse. The applicant's 2008 Form W-2 reflects wages of \$12,262.25. The applicant's spouse's Form I-864, Affidavit of Support under Section 213A of the Act, reflects an annual income of \$5,016, which is consistent with the information provided in the applicant's spouse's October 9, 2008 employment letter from NYC Children's Services. The AAO notes that the applicant's spouse's individual income is less than half of that indicated by the federal poverty guidelines for a single person family. Based on the totality of the record, the AAO finds that the applicant's spouse would experience extreme hardship if she remains in the United States.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

¹ The AAO notes that the one of the birth certificates submitted does not list the parents of the child, therefore, it is unclear as to whether the applicant's spouse has one or two children.

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.