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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

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MAY 03 2010

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. 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 the Ivory Coast who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their two United States citizen children.¹

The Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Director*, dated August 8, 2007.

On appeal, counsel for the applicant states that the applicant's qualifying relative would suffer extreme hardship should the applicant's waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, published country conditions reports; statements from the applicant's spouse; a credit card bill; loan statements; criminal records for the applicant; employment letters for the applicant's spouse; tax returns for the applicant and his spouse; W-2 forms for the applicant's spouse; a medical bill; bank statements; utility bills; apartment leases; health insurance cards; and earnings statements for the applicant's spouse. 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.

¹ The AAO notes that although counsel indicates the applicant and his spouse have two children, the record documents only the birth of the daughter born in 2005.

.....

(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.

In the present case, the record indicates that on August 24, 1995, the applicant was admitted to the United States at New York, New York on a B-2 visa valid until February 23, 1996. *Form I-94, Departure Card*. The applicant married a United States citizen who petitioned for the applicant to obtain lawful permanent resident status. On November 5, 2002 the District Director, New York, New York denied the immigrant visa and application for lawful permanent resident status. *Decision of the District Director*, dated November 5, 2002. On July 14, 2003 the applicant divorced his then wife and on November 1, 2003, the applicant married his current United States citizen spouse. *Judgment of Divorce; Marriage certificate*. The applicant's spouse petitioned for the applicant and on February 11, 2004, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. *Form I-485*. On April 22, 2004, the applicant's Form I-131, Application for Travel Document was approved. *Form I-131*. Although the record does not specify his actual departure date from the United States, the AAO notes that the applicant was paroled back into the United States on August 28, 2004. *Form I-94, Departure Card*. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. The applicant, therefore, accrued unlawful presence from November 6, 2002, the day after his first application for lawful permanent residency was denied until February 11, 2004, the date he filed his second Form I-485 application. In applying to adjust his status, the applicant is seeking admission within ten years of his departure, which occurred between April 22, 2004, the date his Form I-131 was approved, and August 28, 2004, the date he was paroled back into the United States. The applicant is, therefore, 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 family ties to 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 the Ivory Coast or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the Ivory Coast, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The applicant's spouse has no familial or cultural ties to the Ivory Coast. *Attorney's brief*. She was raised in the United States and all of her family lives close to her. *Id.* She does not speak French. *Id.* Counsel notes that her lack of language abilities will affect her adjustment to the Ivory Coast, both personally and in terms of finding employment. *Id.* The record also includes a travel warning issued by the United States Department of State advising United States citizens to defer all non-essential travel to the Ivory Coast. *Travel Warning, United States Department of State*, dated June 1, 2007. The AAO notes that this travel warning remains in effect. *Travel Warning, United States Department of State*, dated September 22, 2009. The record also contains several published country conditions reports regarding the human rights situation and criminal activity in the Ivory Coast. *Published country conditions reports, United States Department of State*, dated 2007. When looking at the record before it, particularly the applicant's spouse's lack of familial and cultural ties to the Ivory Coast, her inability to speak French and how her lack of French would affect her adjustment to the Ivory Coast, and the published country conditions reports and travel warnings regarding the safety of United States citizens in the Ivory Coast, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Ivory Coast.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. Her entire family lives in the United States. *Attorney's brief*. The applicant's spouse notes that being separated from the applicant would cause her to suffer financially. *Statement from the applicant's spouse*, dated November 22, 2005. The applicant's spouse states that the applicant is attending school for an engineering degree and that she has taken out private loans totaling \$19,000 for his education. *Id.* She also indicates that she and the applicant

have \$9,000 in credit card debt and that they are in the process of obtaining a personal loan to start a small business. *Id.* The applicant's spouse states that she will not be able to work in their store because she has a full-time job. *Id.* The applicant's spouse also asserts that separation from the applicant will result in indescribable emotional pain and suffering for her and her daughter born in 2005. *Id.* She states that she and the applicant planned that he would take care of their daughter during the day and attend classes in the evenings and on the weekends. *Id.* The applicant's spouse notes that day care is expensive. *Id.*

On appeal, counsel states that the applicant's spouse would suffer extreme emotional hardship if she were to be separated from the applicant for a decade and that family unity is an important value for the United States. *Attorney's brief*, dated September 6, 2007. He contends that being unable to live together should, in keeping with U.S. policy, be recognized as an extreme and unusual hardship. *Id.* He further asserts that a person involved in this situation would experience profound psychological difficulties and likely become vulnerable to medical illness. *Id.* Counsel also states that the applicant's children's deep bond to their father should be considered as they have never been separated from him. *Id.*

The record includes documentation that establishes the educational and credit card debt claimed by the applicant's spouse. *Credit card bill; loan statements; a medical bill; utility bills; and apartment leases.* While the AAO acknowledges the debt documented in the record, it notes that the most recent letter of employment for the applicant's spouse included in the record shows her gross annual salary to be \$52,000.00 (*See employment letter for the applicant's spouse*, dated October 28, 2005) and the record fails to establish that the applicant's spouse is unable to meet the incurred debt. Furthermore, the AAO notes there is nothing in the record that demonstrates that the applicant would be unable to obtain employment and contribute to his family's financial well-being from a location other than the United States. Additionally, the record does not demonstrate that the family members who, counsel indicates, live near the applicant's spouse would be unable to assist her with her childcare responsibilities. The AAO acknowledges the applicant's spouse's claim that she would suffer emotional hardship if she were to be separated from the applicant. It notes, however, that the record does not include documentation from a licensed healthcare professional regarding the impact of separation on the physical and/or psychological health of the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of 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)).

The AAO acknowledges the difficulties that would be faced by the applicant's spouse as a result of the applicant's inadmissibility. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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.

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.