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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

#6

MAY 11 2010

[redacted]

FILE: [redacted] Office: MEXICO CITY (SANTO DOMINGO) Date:
(BGN 2005681020 relates)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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).

for
Perry Rhew
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 record reflects that the applicant is a native and citizen of Barbados who was found to be inadmissible to the United States pursuant to 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. The applicant is married to a naturalized U.S. citizen and 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), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated November 29, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on August 9, 2004; an affidavit from [redacted] an affidavit from [redacted] nephew, [redacted] a copy of [redacted] naturalization certificate; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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> (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.
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> . . . .
>
> (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 this case, the record shows, and counsel concedes, that the applicant unlawfully resided in the United States from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure in July 1998, and again from January 1999 to November 2000. *Argument in Support of Waiver of Grounds of Inadmissibility* at 1, dated May 2, 2006. The applicant accrued unlawful presence of over one year. She now seeks admission within ten years of her November 2000 departure. Accordingly, she 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's husband, [redacted], states that he has lived in the United States since 1974. He states he has two adult sons, a daughter, and grandchildren, all of whom live in Massachusetts, where he resides. [redacted] states that he was born in Barbados, and although he has no immediate family there, he met the applicant while visiting extended family in Barbados. [redacted] states he does not want to move to Barbados to be with his wife because he has a good job as a housekeeper in a hospital in Boston, Massachusetts, and claims that because of his age and his lack of employment connections in Barbados, employment opportunities in Barbados are extremely limited. According to [redacted], since his separation from his wife, "[t]he loneliness at times is unbearable."

He states that he talks on the phone with his wife every night and cannot afford to visit her on a regular basis given his modest income. [redacted] contends he feels stress many nights, cannot sleep, and wakes up in the middle of the night. He also feels depressed, withdrawn, and talks to himself. *Letter from* [redacted], dated April 14, 2006.

A letter from [redacted] nephew states that [redacted] has expressed to him over the past year that he cannot sleep, has anxiety, and worries about his wife. According to [redacted] nephew, [redacted] has lost at least twenty pounds in the last six months and "[h]is face shows weariness and fatigue." [redacted] nephew believes [redacted] is depressed, but has never suggested he see a physician or counselor because people from Barbados purportedly "do not carry their anxieties and fears to doctors. Rather, they talk with family, take folk medicines, and otherwise bottle it up." *Letter from* [redacted], dated April 17, 2006.

After a careful review of the record, there is insufficient evidence to show that [redacted] has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the couple's circumstances. Regarding [redacted] anxiety, depression, insomnia, and weight loss, there is no letter from any health care professional to substantiate his claim and there is insufficient evidence to show that his hardship is beyond what would normally be expected. In addition, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of removal or inadmissibility. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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, *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), held that 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.

Furthermore, regarding [redacted] claim that he does not want to move back to Barbados, where he was born and where extended family members continue to live, there is no evidence showing that any hardship he may experience would be beyond what would normally be expected. Although the record shows that [redacted] is currently sixty-one years old, there is no indication in the record that he has any physical or mental health issues that would render his transition to moving back to Barbados an extreme hardship. Even assuming [redacted] would have a difficult time finding employment and would suffer some economic hardship were he to move to Barbados, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See*

INS v. Jong Ha Wang, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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.