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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: CHERRY HILL, NJ Date: AUG 2 9 2003

IN RE: Applicant: [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]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

Aug2503_04H212

DISCUSSION: The waiver application was denied by the District Director, Cherry Hill, New Jersey. 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 the Dominican Republic. The applicant 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. The applicant is married to a U.S. citizen and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision,* dated April 25, 2002.

On appeal, counsel asserts that the applicant's U.S. citizen husband and children depend on her emotionally and financially, and that they would suffer extreme hardship if the applicant's waiver were not granted.

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

> (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

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FILE: [redacted] Office: CHERRY HILL, NJ Date: AUG 29 2003

IN RE: Applicant: [redacted]

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ON BEHALF OF APPLICANT: [redacted]

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Robert P. Wiemann, Director
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The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision,* dated April 25, 2002.

On appeal, counsel asserts that the applicant's U.S. citizen husband and children depend on her emotionally and financially, and that they would suffer extreme hardship if the applicant's waiver were not granted.

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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.

On appeal, counsel erroneously asserts that the applicant is eligible for a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) allows for a waiver of inadmissibility pursuant to sections 212(a)(2)(A)(i)(I)(B),(D) and (E), and pursuant to section 212(a)(2)(A)(i)(II) of the Act (relating to criminal acts or convictions). The applicant in this case is not inadmissible pursuant to any of the criminal related grounds listed in section 212(h) of the Act. Rather, the applicant was found to be inadmissible pursuant to section 212(a)(9)(B)(i) of the Act which relates to aliens who are unlawfully present in the United States. As noted above, the requirements listed in section 212(a)(9)(B)(v) of the Act pertain to waivers of inadmissibility under section 212(a)(9)(B)(i) of the Act.

Moreover, in assessing whether extreme hardship exists, section 212(a)(9)(B)(v) considers only hardship to a U.S. citizen or legal permanent resident spouse or parent. It does not take into account hardship to a U.S. citizen child. Counsel's assertions regarding hardship to the applicant's children will therefore not be considered.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed to be relevant in determining whether an alien had established extreme hardship for purposes of a waiver of inadmissibility. 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.

The applicant's husband (Mr. [redacted] asserts in an affidavit that he would suffer financial and emotional hardship if he were separated from the applicant. Mr [redacted] states that he loves his wife and depends on her to help raise his children and to contribute to the payment of their home and other financial obligations. In the alternative, Mr. [redacted] states

that he will suffer financial hardship if he and his family move to the Dominican Republic to be with the applicant.

Mr. [redacted] appears to be in good health, and the evidence in the record reflects that Mr. [redacted] is a native of the Dominican Republic, and that his parents continue to live in that country. Although the record contains general assertions that Mr. [redacted] would suffer financial hardship if he moved to the Dominican Republic, the record contains no detailed or independent information regarding the type of hardship Mr. [redacted] would suffer. Moreover, the record contains no independent information pertaining to economic, social or political conditions in the Dominican Republic that might cause Mr. [redacted] to suffer hardship.

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 did not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if her waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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.