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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: ACCRA, GHANA

Date:

UAN 13 2003

IN RE: Applicant: [Redacted]

Application: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii); and 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)

IN BEHALF OF APPLICANT:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applications were simultaneously denied by the Officer in Charge, Accra, Ghana, and have been forwarded to the Associate Commissioner for Examinations on certification. The denial of the application for permission to reapply for admission will be withdrawn. The denial of the application for waiver of inadmissibility will be affirmed.

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)(A)(ii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii)(II), for having been previously removed from the United States; and 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 beneficiary of an approved petition for alien fiance(e). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii); and a waiver of inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), in order to travel to the United States to marry a United States citizen.

The officer in charge concluded that as it appears the applicant is statutorily ineligible for a waiver of inadmissibility, his application for permission to reapply for admission into the United States must be denied.

Information contained in the record reflects that the applicant was initially admitted to the United States as a nonimmigrant student on January 11, 1989, with authorization to remain for the duration of his student status. On November 20, 1991, the applicant married a United States citizen, Sabrina Maria Miller. On January 28, 1993, the applicant's spouse filed a petition for alien relative on his behalf and the applicant filed an application to adjust his status to that of a lawful permanent resident. On April 12, 1993, the applicant's spouse formally withdrew the petition for alien relative filed on the applicant's behalf and on April 13, 1993, the Service denied the applicant's application for adjustment of status.¹

On July 24, 1993, the applicant was issued an order to show cause and was placed in deportation proceedings as an alien who remained in the United States without authorization beyond January 22, 1991, and as an alien who failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. On November 16, 1993, the applicant filed an application for suspension of deportation. On January 24, 1994, an immigration judge denied that request and ordered the applicant deported to the Ivory Coast. The applicant appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA). On June 7, 2000,

¹ On May 18, 1995, the Circuit Court of Arlington County, Virginia issued a final decree of divorce as proof of termination of the applicant's marriage to Sabrina Maria Miller.



the BIA dismissed the appeal, in part, in finding that the applicant lacked the requisite physical presence for suspension of deportation. The BIA also sustained the appeal, in part, and ordered that the outstanding order of deportation be withdrawn and that the applicant be permitted to depart the United States voluntarily within 30 days from the date of the order, extended to July 25, 2000.

On October 16, 2000, a petition for alien fiance(e) (Form I-129F) was filed on the applicant's behalf by Plernchan S. Pucharat, a native of Thailand who naturalized as a citizen of the United States on September 6, 2000. The petition was approved on November 6, 2000 and forwarded to the United States Embassy in Abidjan for processing.

The applicant filed an Application for Waiver of Inadmissibility (Form I-601) on or about February 14, 2001 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on or about June 19, 2001. Both applications were denied by the officer in charge on August 14, 2001 and are now before the Associate Commissioner for Examinations on certification.

Evidence in the record indicates that the applicant departed the United States voluntarily, within the time allowed, on July 24, 2000. Therefore, he does not require permission to apply for admission into the United States after deportation or removal and the decision of the officer in charge to deny that application will be withdrawn. However, the applicant remains inadmissible to the United States for having been unlawfully present from April 1, 1997, the date the calculation for unlawful presence begins, until his voluntary departure on July 24, 2000.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(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 from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See Matter of L-O-G-, 21 I&N Dec. 413 (BIA 1996).

It is noted that the requirements to establish extreme hardship in the present waiver proceedings under section 212(a)(9)(B)(v) of the Act do not include a showing of hardship to the alien as did former cases involving suspension of deportation or present cases involving battered spouses. Present waiver proceedings require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien. This requirement is identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under section 212(i) of the Act, 8 U.S.C. 1182(i).

In Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors

deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, 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 Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

A review of the documentation in the record, when considered in its totality, fails to establish that the applicant's prospective qualifying relative would suffer extreme hardship over and above the normal disruptions involved in separation. 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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The denial of the application for permission to reapply is withdrawn. The denial of the application for waiver of inadmissibility is affirmed.