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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: OCT 18 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Germany, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the wife of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States to be with her husband.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to remain in Germany. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) 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. Hardship the alien herself experiences upon deportation or refusal of entry is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Regarding the applicant's grounds of inadmissibility, the record reflects that she departed the United States in September 2003 for a vacation to Mexico. Upon realizing that her temporary "ADIT" stamp in her passport had expired, she altered it to reflect an additional year of validity. Thus, she attempted to enter the United States by making a willful misrepresentation of a material fact. Accordingly, the

applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She was removed from the United States on September 7, 2003. The applicant does not dispute her inadmissibility; she freely admits to having altered her passport. Rather, she is applying for a waiver of inadmissibility.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The record reflects that the applicant's husband is a fifty-six-year-old citizen of the United States. He and the applicant have been married since March 2, 2004.

In her March 2004 affidavit, the applicant states that, when she realized that her I-551 stamp had expired, she panicked and altered the date to 2003 because her entire life was in the United States; that she intended to return to the United States and correct her situation; that she regrets her actions; that she and her husband have suffered from her actions; that, since she has been deported, she struggles to continue to keep up with her car payment, her furniture storage, and the apartment she shared with her husband; that it has been a financial hardship maintaining two households; and that, instead of getting married in the United States as planned, she and her husband had to settle and get married in Denmark.

In an undated letter, the applicant's husband states that the applicant is the most sincere person he has ever known; that he believes the applicant changed the date on her I-551 stamp out of paralyzing fear of being unable to re-enter the United States; that the applicant has been crying constantly and feeling very

remorseful; and that, if given a second chance, the applicant would be one of the most upstanding and law-abiding persons in the United States.

In another letter, he states that he is under a doctor's care with a debilitating case of depression; that he needs the applicant to take care of him; that he and the applicant would like to have a child; that their separation has taken a tremendous toll on his health and finances; that seeing each other only once every six months has put a strain on their relationship; and that he lives for the love of his wife and does not want to die without her.

The record also contains a letter from [REDACTED], Ed.S., LAPC, a counselor at the GRN Community Service Board in Norcross, Georgia, dated February 20, 2006. [REDACTED] states that the applicant's husband has been under the care of a staff psychiatrist since January 2006, and that he was diagnosed with major depression. He meets with a counselor once per month for medication management.

The record also contains letters from the applicant's husband's mother and uncle attesting to the hardship he is experiencing as a result of separation from the applicant.

In his March 17, 2006 denial, the OIC found that the applicant had failed to establish that her husband would experience extreme hardship if the waiver application were denied. Specifically, the OIC noted that no evidence was provided as to why the applicant's spouse could not move to Germany. He indicated that by joining his wife in Germany, the applicant's depressive symptoms could be alleviated.

On appeal, the applicant's husband states, in the Form I-290B, that medical institutions in Germany are not free and that he is not a citizen of Germany.

The applicant's husband also submits evidence to demonstrate that, on May 18, 2006, he ingested tranquilizers in an apparent suicide attempt. His stay in the hospital lasted nearly a week, and during that time it was also discovered that he has hypertrophic obstructive cardiomyopathy.

In her May 28, 2006 letter, the applicant states that her husband has been tirelessly filling out immigration forms since September 2003; that they were able to visit each other between April 27 and May 25, 2006 in Germany; that she is still struggling to find a job in Germany due to high unemployment; that during her husband's visit to Germany the applicant saw sadness and fear in her husband's eyes; that her husband took an overdose of sleeping pills one week before he was to return to the United States, requiring her to call an ambulance; that, while in the hospital in Germany they learned of his serious heart problem; that she does not know how her husband will take care of himself alone in Atlanta; that she feels an indescribable burden of blame in not being able to be with her husband in the United States; that her husband is a role model of a United States citizen and husband, and that her only wish for is to be with him in the environment and country in which he was born; and that she wishes she could turn back time and do things the correct way.

In his June 21, 2007 letter, the applicant's husband reiterates that he is suffering from a deep depression and a heart condition, which has worsened since the filing of the appeal; that he has no close relatives upon whom he can depend; that the applicant is very remorseful for her actions; that he is willing to pay any fine; and that he just wants the chance to have his life with his wife back.

In his August 31, 2007 letter, the applicant's husband states that he does not make much money and, in trying to pay for the couple's house in the United States, as well as helping his wife with her bills, he cannot travel to Germany as often as he would like.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy").

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship if the applicant is required to remain in Germany, regardless of whether her husband joins her in Germany or remains in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant remains in Germany.

The applicant has failed to establish that her United States citizen husband would experience extreme hardship if he were to relocate to Germany. The record fails to establish that the adjustment he would face upon relocating to Germany would be any more difficult than that normally faced by others in his situation. The depression he is currently experiencing, which is caused by separation from his wife, would presumably end, as the separation would end. As for his heart condition, the record fails to demonstrate that he would not have access to the German health care system.

Moreover, the AAO notes that the applicant's marriage to her husband occurred on March 2, 2004, nearly six months after her September 7, 2003 removal from the United States. At the time of the applicant's removal, her husband was married to another individual, and the final judgment and decree of divorce of that marriage was not entered until January 14, 2004. It appears, therefore, that the applicant's marriage to her husband is an after-acquired equity. The court in *Garcia-Lopes v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991), held that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the OIC properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon relocation to a new country and adjustment to life there.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her husband would suffer hardship unusual or beyond that normally expected upon relocation to a new country. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is dismissed. The waiver application is denied.