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U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**

H3

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: SEP 10 2004

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.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Phoenix, Arizona. 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 United Kingdom who 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 citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Interim District Director*, dated July 29, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in granting the applicant advance parole; the notice given to the applicant on her advance parole authorization was inadequate and the applicant has demonstrated extreme hardship to her U.S. citizen husband imposed by her inadmissibility to the United States. *Form I-290B*, dated August 28, 2003.

In support of these assertions, counsel submits a brief, dated September 26, 2003; a copy of an Immigration and Naturalization Service [now CIS] memo, dated November 26, 1997; a copy of a letter from counsel provided to the former INS, dated February 12, 2003 and copies of articles addressing children of single parents and property costs in the United Kingdom. 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.

....

(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 application, the record indicates that the applicant entered the United States on a visitor visa on or about January 2, 1999. On August 4, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and used the advance parole authorization to depart and reenter the United States on December 29, 2001.

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 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 accrued unlawful presence from July 2, 1999, the date upon which her visitor visa to the United States expired, until August 4, 2000, the date of her proper filing of the Form I-485. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 (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 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.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to the United Kingdom in order to remain with the applicant. Counsel contends that the applicant's spouse has resided in the United States throughout his life and has established a circle of friends that provides him with emotional support and companionship. *Brief in Support of Appeal of Interim District Director's Erroneous Denial of I-601*, dated September 26, 2003. Further, counsel states that the applicant's spouse is employed in the technical recruiting business, an industry that requires in-depth knowledge specific to the United States job market. Counsel contends that these skills would be useless in the United Kingdom and the applicant would be forced to discontinue his lucrative career without potential for establishing a new one if he relocated to the

United Kingdom. *Id.* at 18. As a result of the loss of his employment, counsel indicates that the applicant would no longer have health benefits, which he needs to provide adequate health care for himself and his family. *Id.* at 19.

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment, health care benefits and residence in his native country. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's spouse would experience financial hardship as a result of separation from the applicant. *Id.* at 22. The record fails to demonstrate that the applicant will be unable to contribute to her financial well being from a location outside of the United States. Further, the record establishes that the applicant and her spouse reported over \$90,000 in income during 2001 and fails to demonstrate that the specific financial obligations of the applicant and her spouse exceed these earnings. *2001 U.S. Individual Income Tax Return*, dated March 6, 2002. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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