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**U.S. Citizenship  
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*HB*

FILE: [REDACTED]

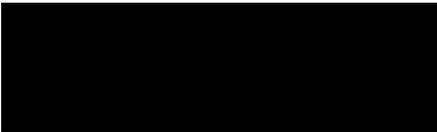
Office: SINGAPORE

Date: SEP 14 2005

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:



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 cursive script, appearing to read "Robert P. Wiemam".

Robert P. Wiemam, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer in Charge, Singapore. 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 Malaysia 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 and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The acting officer in charge 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 Acting Officer in Charge*, dated September 7, 2003.

On appeal, the applicant's spouse asserts that he will suffer extreme emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Spouse on Appeal*, dated October 23<sup>rd</sup>, 2003.

The record contains a statement from the applicant's spouse in support of the appeal; two statements from the applicant's spouse in support of the Form I-601, Application for Waiver of Ground of Excludability; a statement from the business partner of the applicant's spouse; a statement from the applicant in support of the Form I-601 application; a written evaluation of the applicant's spouse's psychological status conducted by a doctor of clinical psychology, and; documentation of the applicant's spouse's two business ventures. 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 was admitted to the United States in B-2 status as a visitor for pleasure on or about October 28, 1995, valid for a six-month period. She remained until November 23, 1999, approximately three years and seven months beyond the expiration of her B-2 status. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until November 23, 1999, the date she departed the United States. Thus, the applicant accrued approximately two years and eight months of unlawful presence.<sup>1</sup> On July 16, 2001, the applicant sought to reenter the United States at Newark, New Jersey. Accordingly, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant does not contest her inadmissibility on appeal.

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 being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 Bureau 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.

On appeal, the applicant's spouse asserts that he will suffer extreme emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Spouse on Appeal*, dated October 23<sup>rd</sup>, 2003. The applicant's spouse states that he owns and operates a restaurant, and he is a partner with management responsibility in a second restaurant venture. *Id.* The applicant's spouse indicates

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<sup>1</sup> The acting officer in charge stated that the applicant was unlawfully present for a total of three years and seven months, beginning with the date that her B-2 status expired on or about April 28, 1996. However, as provided above, the applicant's unlawful presence did not begin until the enactment of the unlawful presence provisions under the Act, April 1, 1997. It is noted that the applicant departed and reentered the United States on several occasions after November 23, 1999. The record is unclear regarding these subsequent entries, and the AAO is unable to determine whether the applicant was inspected and admitted, and if so, in what status and for what duration. Thus, the applicant may have accrued additional periods of unlawful presence after November 23, 1999.

that while the applicant was in the United States she managed financial operations and the sales floor and associated staff of his first restaurant, and that her participation is vital to the successful operation of both businesses. *Id.* The applicant's spouse asserts that he entered into the new venture in reliance that the applicant could operate the first restaurant, and that her absence is causing significant financial loss averaging approximately \$5,000 per month due to the need for the applicant's spouse to manage both businesses. *Id.* The applicant's spouse stated that his inability to perform his obligations for the new business has led to total losses of approximately \$200,000. *Statement from Applicant's Spouse in Support of Form I-601.* The applicant's spouse states that, should the applicant be prohibited from entering the United States, he will need to frequently travel to Malaysia to visit her, which will create further economic loss due to the need to either close his restaurants or place them under inferior management. *Statement from Applicant's Spouse on Appeal.* The applicant's spouse further states that he would suffer financial hardship due to supporting the applicant in Malaysia. *Id.*

In a letter from the business partner of the applicant's spouse, he states that the new restaurant venture is over a year behind schedule and that customer service has been declining at the applicant's spouse's first restaurant. *Affidavit from Business Partner*, dated July 15, 2003. The business partner explains that the new restaurant venture has incurred approximately \$200,000 in losses and liabilities prior to commencing operations, including expenses for rent and construction. *Id.* The business partner contends that the new venture will only begin to recoup its losses once the applicant returns to the United States. *Id.*

The applicant's spouse stated that he would not be able to secure a high paying job or operate a restaurant in Malaysia as he does in the United States. *Statement from Applicant's Spouse in Support of Form I-601.*

The applicant's spouse provides that he is suffering emotional hardship due to being separated from the applicant. *Statement from Applicant's Spouse on Appeal.* The applicant submits a written evaluation of her spouse's psychological status conducted by a doctor of clinical psychology. *Psychological Evaluation by Dr. Stephen Reich*, dated June 7, 2003. Dr. [REDACTED] states that the applicant and her spouse met in 1996 and were married in 2001. *Id.* at 3. After one interview with the applicant's spouse, Dr. [REDACTED] finds that the applicant's spouse experiences symptoms of a major depressive disorder as a result of his separation from the applicant. *Id.*

Upon review, the applicant has not established that her spouse will suffer extreme hardship if she is prohibited from entering the United States. The record does not support the applicant's spouse's assertion that he is suffering significant economic loss due to the applicant's absence from his business. The applicant and his business partner state that they have incurred losses of approximately \$200,000 in attempting to open the new restaurant, yet it is understood that certain start-up costs are required of any new business venture. The applicant's business partners lists among the included expenses the cost of construction and pre-opening rent payments. These expenses would be incurred whether or not the applicant was available to assist in the operation of her spouse's first restaurant, and thus they cannot be attributed to her absence.

Further, it has not been established that the applicant's spouse cannot hire an employee to perform the tasks that the applicant previously performed. The record reflects that the applicant has been out of the United States for lengthy periods of time in the past, including a six-month period beginning in November 1999 and a four-month period beginning in November 2000. The applicant's spouse's first restaurant was in operation

during those periods, yet her spouse has not reported any difficulty in operating the restaurant in her absence. Thus, it is evident that her tasks can be performed by another individual. The AAO understands that the applicant's spouse greatly prefers to have the applicant perform important managerial duties in his business, yet the unavailability of his first choice of an employee or partner is not deemed extreme hardship. Further, the record fails to show that the restaurant does not generate sufficient income to hire another employee.

The applicant and her spouse indicate that they will incur additional financial losses due their separation, as her spouse will need to travel to Malaysia to visit her, her spouse will be required to support her financially abroad, and long distance communication is costly. However, these effects of the applicant's inadmissibility are common and expected when a family member is prohibited from entering the United States. 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). 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).

The applicant's spouse states that he is suffering from emotional hardship due to the prolonged separation from the applicant. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that her spouse is suffering unusual consequences. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 spouse 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.

The AAO has examined the evaluation of the applicant's spouse by Dr. [REDACTED]. Yet, the written report reflects that the applicant's spouse was examined a single time in connection with these proceedings. The applicant has not shown that her spouse has required or received follow-up care in the nine-month period between the date of the evaluation and the filing of the present appeal. Thus, the single evaluation is not sufficient to establish that the applicant's spouse is suffering from unusual or extreme emotional consequences due to the applicant's absence.

The applicant's spouse states that he cannot relocate to Malaysia, as he would not have comparable employment or business opportunities there. 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.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's spouse should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.