

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

H3

FILE:

Office: FRANKFURT Date: **NOV 01 2006**

IN RE:

APPLICATION: 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)

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 Officer in Charge, Frankfurt, Germany, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Germany 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 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 spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 9, 2004.

The record shows that, on December 1, 2003, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved February 6, 2004. The applicant appeared at the U.S. Embassy in Frankfurt, Germany, on March 4, 2004. The applicant testified that she was admitted to the United States as a Visa Waiver Pilot Program (VWPP) visitor in April 1997. The applicant's period of authorized stay expired 90 days after her admission. The applicant remained in the United States until the date on which she was removed from the United States in 2000. In May 2000, immigration officers apprehended the applicant and placed her in removal proceedings. On June 12, 2000, the applicant was removed from the United States and returned to Germany.

On March 4, 2004, the applicant filed the Form I-601 along with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant's spouse contends that he would suffer severe financial debilitation. *Applicant's Brief*, dated August 5, 2004. In support of these assertions, the applicant's spouse submitted the above-referenced brief, a memorandum extending the applicant's spouse's overseas tour and the applicant's civilian leave and earning statement. The entire record was reviewed and considered in rendering a decision in this case.

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.

The officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. Counsel does not contest the district director's determination of inadmissibility.

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. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing section 212(i) extreme hardship. Thus, hardship to the applicant's children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 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 U.S. 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. The BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that, on April 11, 2003, the applicant married her U.S. citizen spouse, [REDACTED] who works as a civilian contractor for the U.S. Army in Germany. The applicant and [REDACTED] do not have any children together. The applicant has an adult daughter from a previous relationship, who is a native and citizen of Spain, is married, resides in the United States and became a conditional resident in 2003 and a lawful permanent resident in 2005. The applicant has a second adult daughter from a previous relationship, who is a native and citizen of Spain, does not appear to have any status in the United States and has a daughter of her own. The applicant has a twenty-year old son from a previous relationship, who is a native and citizen of Germany who became a lawful permanent resident in 2004. The applicant's spouse has two adult sons from a previous relationship who are both U.S. citizens by birth and reside in the United States. The record reflects further that the applicant is in her 50's, [REDACTED] is in his 60's, and there is no evidence that [REDACTED] has any health concerns.

The applicant's spouse contends that he would suffer extreme hardship if he were to return to the United States without the applicant because it would be impossible for him to maintain two households in separate countries to meet what he considers to be a reasonable standard of living, and would suffer the emotional suffering and strain in knowing he has failed as a husband and father. [REDACTED] in his brief, provides estimates of what he considers to be the associated expenses in running two households that meet what he considers to be a reasonable standard of living, stating that he would be unable to cover such costs, and comparing it to the costs he would have if the family were able to reside together in the United States. Mr. [REDACTED] includes in his cost estimates the costs associated with maintenance of the applicant, himself, the applicant's 20-year old son, and the applicant's adult daughter and her child. The applicant's spouse states that, as a civilian contractor for the U.S. Army, he is nearing the end of his contract and must return to a position in the United States.

Financial records indicate that [REDACTED] earns approximately \$57,375 per year and also receives retirement funds in the amount of \$13,620 per year, totaling approximately \$70,995 per year in income. Financial records reflect that the applicant has been unemployed since prior to the marriage. There is no evidence in the record to reflect whether the applicant's adult daughter is employed or contributes any income to the household that would ease [REDACTED] financial obligations. There is no evidence in the record to suggest that the applicant or her adult daughter would be unable to obtain *any* employment that would provide a source of income that would ease [REDACTED] financial obligations. It appears that [REDACTED] has family members in the United States, such as his two adult sons, who may be able to provide financial support in the absence of the applicant. The record shows that, even without assistance from family members in the United States or the applicant and her adult daughter, [REDACTED] has, in the past, earned *more* than sufficient income to exceed the poverty guidelines for his household in the United States, as well as the poverty guidelines for the applicant, her children and grandchild in Germany. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>; *Eurostat*, <http://epp.eurostat.ec.europa.eu>; *Poverty in the United States* http://en.wikipedia.org/wiki/Poverty_in_the_United_States. While it is unfortunate that the applicant's spouse and family may have to lower their standard of living, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support two households, even when combined with the emotional hardship described below.

The applicant's spouse contends that he will suffer the pangs of emotional suffering and strain knowing that he has failed as a husband and father, as well as the additional separation consequences of being unable to

afford visits to Germany. As discussed above, while it is unfortunate that the applicant's spouse and family may have to lower their standard of living, the applicant's spouse earns more than enough to support the two households and the financial records also reflect that he earns income sufficient **to support two households and afford visits to Germany. There is no evidence in the record to suggest that** [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Furthermore, the record indicates that [REDACTED] has family members, such as his adult sons, in the United States, who may be able to assist him emotionally in the absence of the applicant.

The applicant's spouse does not contend that he would suffer hardship if he were to remain in Germany with the applicant or that he would be unable to obtain *any* employment in Germany once his contract with the U.S. Army expires. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should he remain in Germany with the applicant. Additionally, 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 and, as discussed above, [REDACTED] would not experience extreme hardship if he returned to the United States without the applicant.

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 spouse would face extreme hardship if the applicant were refused admission. **Rather, the record demonstrates that [REDACTED] will face no greater hardship than the** unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme hardship*," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.