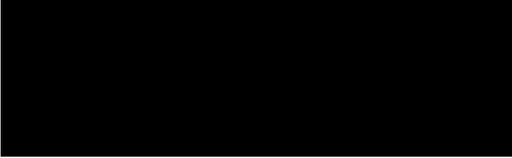




U.S. Citizenship
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APR 11 2007

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: [Redacted]

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:



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 Director, Vermont Service Center, 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 Guyana with landed immigrant status in Canada 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 the spouse of a naturalized U.S. citizen and the mother of three lawful permanent resident sons. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and sons.

The director 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 Director*, dated August 2, 2005.

The record reflects that, on April 3, 1997, the applicant was admitted to the United States as a visitor for pleasure. The applicant remained in the United States past October 2, 1997, the date on which her nonimmigrant status expired. On July 3, 2001, the applicant left the United States and was admitted to Canada as a Landed Immigrant, where she has since resided. On August 4, 2001, the applicant attempted to reenter the United States. The applicant was refused admission because she had previously overstayed her nonimmigrant visa status. On August 28, 2002, the applicant married [REDACTED]. On October 4, 2002, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on November 3, 2003. On May 10, 2004, the applicant filed an Application for Immigrant Visa and Alien Registration (Form DS-230) based on the approved Form I-130. On July 27, 2004, the applicant appeared at the U.S. Consulate in Montreal, Canada. The applicant testified that she had accrued unlawful presence of greater than one year before traveling to Canada on July 3, 2001. On April 20, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, the applicant contends that her husband and children will suffer great hardship if she is separated from them. *See Applicant's Brief*, dated August 14, 2005. In support of her contentions, the applicant submits the referenced brief, financial and employment-related documentation, and affidavits from her family. The entire record was reviewed 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 director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from October 2, 1997, the date on which her authorized nonimmigrant stay expired, until July 3, 2001, the date on which she traveled to Canada. The applicant does not contest the officer in charge'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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) cases. Thus, hardship to the applicant's lawful permanent resident sons 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, 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).

Since [REDACTED] is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether he resides in the United States or Canada.

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).

[REDACTED] is a native of Guyana who became a lawful permanent resident in 1996 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] have a 17-year old son and a 14-year old son who are both natives and citizens of Guyana who became lawful permanent residents in 1996 and 2005, respectively. The applicant has a 35-year old son from a previous relationship who is a native and citizen of Guyana who became a lawful permanent resident in 1992. The applicant has a 36-year old daughter from a previous relationship who is a native of Guyana who became a Canadian citizen. The record reflects that the applicant and [REDACTED] are in their 50's. There is no evidence in the record that [REDACTED] has any health concerns.

On appeal, the applicant asserts that her husband cannot wait for the two of them to be reunited since the years they have been apart have been very stressful, lonely and at times they have reached the brink of despair. The applicant asserts that [REDACTED] works two jobs and volunteers as an Emergency Medical Technician (EMT). The applicant states that [REDACTED] wish to further his studies in the medical field is hampered by the extra burden his trips to Canada place on his already demanding schedule. The applicant asserts that, in September 2005, her two younger children, who have resided with her in Canada since July 2001, will begin private school in the United States and it will be very difficult for [REDACTED] to care for the children as he has to work extended hours to provide financially for them. The applicant asserts that it is really important for her younger children to be in a nurturing and loving environment with both parents and that the separation is beginning to take its toll on the family. [REDACTED] in his affidavit, states the waiver denial would cause hardship to his marital relationship and his family structure. He states the applicant is his best friend and he depends on her for emotional support and advice. He states that it would be extremely difficult for him to maintain a loving marital relationship with the applicant and their separation has caused him a great deal of pain and aggravation. He states that he cannot eat or sleep because it is unbearable for him to be without the applicant. He states that he works two jobs and attends EMT training. He states that it is hard to attend school and maintain two positions in order to pay living expenses for two households as well as travel expenses. He states that if the applicant were granted admission to the United States he would only have to work one job, it would be less stressful and he would be able to continue his studies. He states that if the waiver application were denied, he would be left to support his family alone and would have to forgo his dreams of becoming a paramedic. He states that his two siblings in the United States have helped him emotionally through the ordeal of separation from the applicant. He states that both of his younger children need to have both their mother and father.

Financial records indicate that, in 2004, [REDACTED] earned approximately \$59, 913. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. [REDACTED] in his affidavit, states that he has to provide household expenses to the applicant in Canada. The record reflects that the applicant is employed as a mushroom harvester in Canada, which is a source of income that could ease [REDACTED] financial obligations. Moreover, the applicant has family members in Canada, such as her adult daughter, who may be able to assist her financially or physically, which would also ease [REDACTED] financial obligations. While the AAO notes that the applicant indicates that her

children will begin private school in the United States in September 2005, the record does not establish that [REDACTED] would be unable to support himself and his two children without the financial support of the applicant. Further, although it is unfortunate that [REDACTED] would essentially become a single parent, this is also not a hardship beyond those commonly suffered by aliens and families upon removal. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself and his two children without income from the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record to establish that [REDACTED] or his children have a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges [REDACTED] may be concerned that the children will essentially be raised in a single-parent environment, this is a hardship commonly encountered by aliens and families upon removal. Additionally, while it is unfortunate that [REDACTED] and the children would experience distress and some level of depression as a result of their separation from the applicant, these emotions are commonly felt by aliens and families upon removal. Moreover, the record reflects that [REDACTED] has family members in the United States, such as his siblings, who may be able to support him financially, physically and emotionally in the absence of the applicant.

On appeal, the applicant asserts that [REDACTED]'s relocation to Canada would be an extremely difficult one. The applicant states that [REDACTED] is employed in two jobs in the United States, volunteers as an EMT and coaches a young West Indian cricket team in his community. The applicant states that [REDACTED] has accrued significant benefits in the United States, such as fully covered medical, dental and vision care, extended vacation, an AIG annuity account, a fixed deposit account and a 401k. The applicant asserts that it would be heart wrenching for him to see these things vanish. The applicant asserts that [REDACTED] has resided in the United States for so long that it is his home and he would like to remain there for the rest of his life. She asserts that [REDACTED] siblings reside in the United States and that they depend on each other for emotional support and advice. [REDACTED], in his affidavit, states that he is unwilling to leave the United States because he has many opportunities and privileges in the United States. He states he is accustomed to the comfort of living in the United States and he does not have any family in Canada. He states that his two siblings reside in the United States and that they depend on each other for emotional support and advice.

Having analyzed the hardships that the applicant and [REDACTED] claim he will suffer if he were to join the applicant in Canada, the AAO finds that they do not constitute extreme hardship. The record reflects that the applicant is employed in Canada and there is no evidence in the record that establishes that [REDACTED] would be unable to obtain employment in Canada. While the employment [REDACTED] may be able to obtain may not be comparable to the employment he has in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986).* [REDACTED] in his affidavit, asserts that he would not give up his U.S. citizenship in order to become a legal resident in Canada. However, there is no evidence in the record that establishes that [REDACTED] would have to abandon his U.S. citizenship in order to reside in Canada. There is no evidence in the record to suggest that [REDACTED] or his children suffer from a mental or physical illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the hardships that would be faced by [REDACTED] upon relocation to Canada--adjusting to the culture, country, economy, environment, separation from his friends and family and the inability to pursue opportunities that are available in the United States--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Finally, as previously noted, [REDACTED] is not required to reside outside of the United States

as a result of the denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in 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 the unfortunate, but expected disruptions 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, which meets the standard in section 212(a)(9)(B)(v) of the Act, 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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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.