

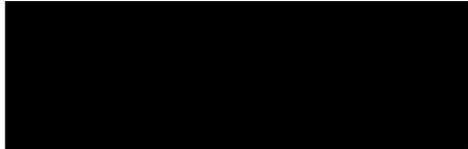
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U.S. Citizenship
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Services

43

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FILE: [REDACTED] Office: LOS ANGELES (SANTA ANA, CA) Date: APR 17 2007

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:
[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Vietnam and a citizen of France 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 record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 husband and United States citizen daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 13, 2005.

On appeal, the applicant, through counsel, asserts that the hardship that the applicant's spouse will suffer "if the applicant is removed from the U.S. is over and above the normal disruptions involved in separation of a family member." *Form I-290B*, filed September 27, 2005. Counsel claims that the applicant's United States citizen daughter would "forego all [her] rights and opportunities that she have [sic] in the U.S., higher education, and her basic fundamental rights that the U.S. government affords to its citizens." *Id.*

The record includes, but is not limited to, counsel's brief, a statement by the applicant's spouse, numerous tax documents, and photos of the applicant and her husband. The entire record was reviewed and considered in arriving at 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.

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter, brother, and sister-in-law would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident children or siblings. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States on October 13, 2000, with authorization to remain in the United States until January 12, 2000. On February 9, 2001, the applicant gave birth to her United States citizen daughter, Christine Doan Mouton. On January 17, 2003, the applicant married [REDACTED] in Santa Ana, California. On March 28, 2003, the applicant filed a Form I-130 and an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 18, 2003, the applicant departed the United States for Canada and returned on December 21, 2003. On January 14, 2004, the District Director determined the applicant abandoned her Form I-485 by departing the United States on December 18, 2003, without prior authorization by Citizenship and Immigration Services (CIS). On February 19, 2004, the applicant filed another Form I-130 and Form I-485. On April 21, 2005, the Form I-130 was approved. On September 9, 2005, the applicant filed a Form I-601. On September 13, 2005, the District Director denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence, she failed to demonstrate extreme hardship to her United States citizen spouse, and she failed to submit a statement from her spouse. The District Director found the applicant was unlawfully present in the United States from January 12, 2000 until December 13, 2003.¹ 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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;

¹ The AAO notes that the applicant accrued unlawful presence from January 12, 2000, the date her authorization to remain in the United States expired, until March 28, 2003, the date the applicant filed her initial Form I-485.

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 the applicant's "waiver were denied because he depends on her for financial and emotional support." *Applicant's Brief on Appeal*, page 3, filed December 23, 2005. "Mr. [REDACTED] is currently in school and the Applicant is the sole provider for the family." *Id.* The applicant's husband states he has "lived on [the applicant] for the whole year in order to continue to go to school." *Letter by [REDACTED]*, dated September 26, 2005. Counsel states that if the applicant were removed from the United States, the applicant's husband "would be faced with the unconscionable decision of dropping out of school so that he can accompany his wife to France or staying in school in the United States and suffer financially and emotionally without [the applicant]." *Applicant's Brief on Appeal*, page 4, *supra*. The AAO notes that the applicant's spouse graduated with an Associate in Science Degree in Medical Assisting, in August 2003. Counsel states the applicant's spouse is "on the wait list to start nursing school at Grossmont College;" however, there was no documentation provided that the applicant is on a "wait list" or that he is currently enrolled in school. *Id.* at 4. Additionally, the AAO notes that with his degree in Medical Assisting, no reason has been given as to why the applicant's husband cannot obtain employment in his field. Also, documentation was submitted indicating that the applicant's husband is collecting unemployment compensation. The applicant's husband claims he will have mental and emotional problems if the applicant were removed from the United States. *See Letter by [REDACTED]*, *supra*. The applicant's mother-in-law states her son is losing sleep and she worries about his mental health. *See Letter by [REDACTED]* dated September 26, 2005. The AAO notes that there are no psychological evaluations of the applicant's husband for the AAO to review to determine what personal issues are affecting the applicant's spouse's emotional and psychological wellbeing or that they are beyond those experienced by others in the same situation. There was no evidence submitted that the applicant's husband could not obtain employment in France or attend school in France. The AAO finds that the applicant failed to establish that her husband would face extreme hardship if he joined his wife in France.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States. Counsel states the applicant and her family reside with the applicant's brother, "who assists them financially by letting them live with him free of charge." *Id.* at 3. The applicant's husband states if his wife is removed from the United States, he will have "nowhere to go." *Letter by [REDACTED]* Additionally, the applicant's daughter would have nowhere to live. *See Applicant's Brief on Appeal*, page 3, *supra*. However, it has not been established that the applicant's brother would remove the applicant's husband and daughter from his home. In addition, the applicant's brother and sister-in-law currently help take care of the applicant's daughter. *See Letter by [REDACTED]*, dated September 26, 2005. Counsel claims "it would be a hardship for Mr. [REDACTED] to visit his wife in France, as he is in school and depends on his wife for financial support." *Applicant's Brief on Appeal*, page 3, *supra*. The AAO notes there has been no evidence submitted demonstrating that the applicant cannot afford to have her husband come to France for visits. As a United States 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. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and

the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States 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).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in France and the emotional hardship of separation, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists: 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 removal and does not rise to the level of extreme hardship.

United States 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, 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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.