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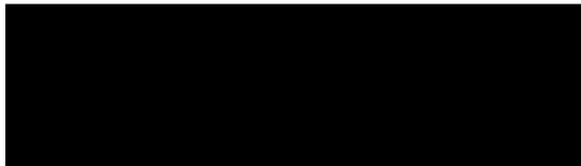
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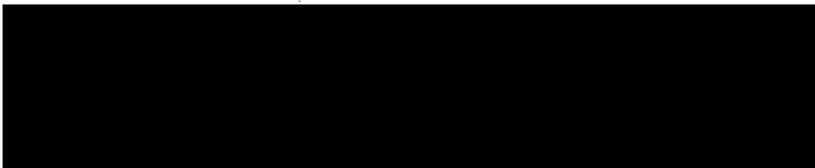


FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: APR 17 2007

IN RE: [REDACTED]

PETITION: 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 PETITIONER:



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

The applicant, a citizen of Germany, was found inadmissible to the United States under 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 the spouse of a United States citizen, and 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 return to the United States in order to join her husband.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband and children would suffer extreme hardship if she were denied entry to the United States. 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States on July 7, 1998, with authorization to remain until October 6, 1998. However, she did not depart the United States until May 3, 2000. As she had resided unlawfully in the United States for more than one year and then sought admission within ten years of her 2000 departure, she is inadmissible under section

212(a)(9)(B)(II) of the Act. The applicant does not contest the director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

The record contains several references to the hardship that the applicant's children would suffer if the applicant is refused admission to the United States. However, 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 his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship the applicant or the couple's children will face cannot be considered, except as it may affect the applicant's husband.

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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 that:

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).

The record reflects that the applicant's husband is a forty-five-year old citizen of the United States. He has been a citizen of the United States since 2000. He and the applicant have been married since February 26, 1988 and have two daughters, who are ten and fifteen years of age.

The record contains two affidavits from the applicant's husband (the record contains no affidavits, letters, or other testimony from the applicant): the first is dated June 29, 2005 and was submitted with the Form I-601; the second, submitted on appeal, is dated September 12, 2005.

In his first affidavit, the applicant's husband states that if he were to enter the United States with the children but not the applicant, he could not afford childcare. Nor could he remain in Germany with the family, as he had already quit his job, and the family had no health insurance. Moreover, the costs of supporting two households would be extraordinary.

The applicant's husband also stated that if the family remained in Germany they would be required to pay for tutoring and lessons for their daughters so that they would remain at the same school level as their peers.¹ Otherwise, they would have a limited scope of educational opportunity.

The applicant's husband stated his great love for his wife, stated that she is the backbone of the family, that the girls are very emotionally attached to the applicant, that permanent separation from their mother would cause long-term damage, and that his wife's unlawful presence was his fault, as he never filed for immigrant status on her behalf because they did not know whether they would remain in the United States. He notes the toll the separation is taking on the family, both emotionally and economically.

In his second affidavit, the applicant's husband states that his younger daughter has dyscalculia, a learning disability, and cannot receive adequate treatment or accommodation in Germany. He states that this was the "number one reason" for the family's return to the United States. He states that the family have "exhausted all possibilities" of finding an appropriate school for their daughter, but that schools offering appropriate special education courses are nonexistent.

He also states that he would not be able to obtain employment in Germany. He states that, as a forty-four-year-old (at the time of the affidavit), he is considered elderly, and that as a foreign national, he is "very low on the totem pole for the few jobs that exist." The applicant's husband also notes Germany's high rate of unemployment. He also states that he does not have a current permit to reside in Germany.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

¹ The applicant's husband did not indicate why, if the family had lived in Germany since 2000, this would not have been the case before they decided to move to the United States.

The AAO finds that the district director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the deportation or refusal of entry of a spouse.

First, the AAO finds that the applicant has not established that her husband would face extreme hardship if he returns to Germany to join the applicant.

While counsel and the applicant's husband have stated that the couple's younger daughter suffers from a learning impairment, no evidence has been submitted to substantiate this claim. While the applicant submitted a statement titled "medical certificate," the credentials of the author were not submitted; no information was submitted to demonstrate that this document was issued by a physician. Moreover, the only information submitted regarding the learning impairment is that she "suffers from a disturbance of language development of unknown origin. ADS is discussed to play a role." On appeal, the applicant's husband states that she suffers from dyscalculia, but no evidence regarding this diagnosis was presented. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nor has the applicant submitted any evidence to document the assertion that the German school system cannot adequately educate their daughter.

Nor has the applicant submitted evidence to document the assertion that the applicant's husband is "unemployable" in Germany and that the family's financial situation there would be "bleak." On appeal, counsel stated the following:

When [the applicant's husband] quit his job, he terminated that relationship and consequently, he is virtually unemployable in Germany because he is now considered a foreign worker and at 44 years old, [he] is considered elderly in his field. . . .

However, counsel offered no documentary evidence to support these assertions, citing instead to the applicant's husband affidavit as evidence. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Neither counsel nor the applicant have submitted any evidence in support of their contentions that Americans are "virtually unemployable" in Germany, or that forty-four-year-olds are considered elderly. Nor was any evidence submitted to document the applicant's husband's statement that minorities (of which he, as a Honduran-American, is considered) face "extreme discrimination" in hiring.

Counsel also states, without support, that the unemployment rate in Germany is 11.%, thus "further lessening [his] chances of obtaining employment." However, this figure appears to be the unemployment rate for the entire German economy. Counsel does not offer more relevant statistics such as unemployment figures in the family's region of Germany or in the applicant's husband's field of work.

Counsel also states that the applicant's husband cannot remain in Germany longer than 90 days, since he is "unemployable" and no longer holds foreign worker status. However, no evidence is submitted to establish that he cannot obtain status based upon his marriage to a German citizen.

For all of these reasons, the applicant has failed to establish that her United States citizen husband would face extreme hardship if he re-joined her in Germany.

Nor has the applicant established that her husband would face extreme hardship if he remained in the United States without her. First, the AAO incorporates here its previous discussion regarding the lack of evidence regarding the lack of evidence regarding the younger daughter's learning impairment.

The AAO notes the inclusion of the unsigned September 8, 2005 letter from [REDACTED] Ed.D., a professional counselor who states that he has been counseling the applicant's husband. While he does not make a diagnosis, Dr. [REDACTED] states that the applicant's husband shows extreme symptoms of depression, insomnia, lack of appetite, and frequent anxiety attacks. Dr. [REDACTED] states that the applicant's husband is unemployed because he is unable to sit through a job interview as a result of these symptoms,² and that he has "never seen such a dire situation." He also states that the couple's oldest daughter, who accompanied her father to the United States, "is in the beginning stages of an eating disorder."

However, the AAO finds that this letter does not establish extreme hardship beyond that normally expected upon separation from a spouse. Although the input of any mental health professional is respected and valuable, the AAO notes that the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for the depression he suffers. For example, while Dr. [REDACTED] states that the applicant's husband's depression, anxiety, loss of appetite, and panic attacks are "dire," there is no indication that the applicant's husband has been prescribed any medication or other types of treatment. Nor does Dr. [REDACTED] make a diagnosis, or indicate that anyone else has made a diagnosis, of depression, anxiety, etc. Finally, the AAO notes that Dr. [REDACTED] conclusions do not reflect the insight and elaboration commensurate with an established doctor-patient relationship,³ thereby rendering his findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

While the applicant's husband would certainly lose the love and companionship of his wife if required to wait until 2010 for her to re-enter the United States, the record does not establish that the loss would be beyond that normally expected upon separation. Nor would the childcare expenses that the applicant's husband would face be greater than those normally expected.

For all of these reasons, the applicant has failed to establish that her United States citizen husband would face extreme hardship if he remained in the United States without her.

² In a similar vein, counsel's September 12, 2005 appellate brief states that the applicant's husband is so depressed "that he makes a poor impression when conducting job interviews and is generally unable to attend job interviews." However, the applicant's husband's September 12, 2005 statement, written four days after Dr. [REDACTED] letter and the same day as counsel's appellate brief, states the following: "I am currently in the final stages of interviewing for a position in the United States, which not only is well compensated but features health care. . . ." Counsel's and Dr. [REDACTED] statements that the applicant's husband is too depressed to obtain employment are inconsistent with the applicant's husband's own statement that he is in the final stages of interviewing for a position, particularly in light of how recently he had entered the United States (see footnote 3, *infra*).

³ Dr. [REDACTED] and the applicant's husband do not have an established doctor-patient relationship. The Form I-601 was filed on June 29, 2005; at that time the applicant's husband was still living in Germany. The applicant's husband entered the United States at some point after that date; the AAO notes that the applicant's husband residential lease agreement began on August 11, 2005. Regardless of the date of actual entry, the fact that Dr. [REDACTED] letter was written on September 8, 2005 indicates that he and the applicant's husband lack an established relationship.

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 husband will face extreme hardship if the applicant is refused admission. Particularly if he remains in the United States, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Germany 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. As noted previously, United States 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 United States citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). Minus documentary evidence to support the applicant's assertions, the AAO is unable to enter such a finding at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.