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U.S. Citizenship  
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FILE:

Office: CHICAGO

Date:

AUG 23 2007

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a citizen of the United Kingdom. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than 1 year. He 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 remain in the United States with his U.S. citizen wife.

The record reflects that the applicant was first admitted into the United States in H-1B status on June 15, 1995. The applicant remained employed after his H-1B status expired on July 1, 2001. The applicant's employer, HA-LO Industries, Inc., filed an Immigrant Petition for Alien Worker (Form I-140) on the applicant's behalf on October 1, 2001. The petition was approved on December 5, 2001. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on June 21, 2002. The applicant subsequently departed from the United States and returned with advance parole on numerous occasions. The applicant and his spouse, [REDACTED] a native and citizen of the United States, were married in the United States on April 21, 2005. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 26, 2005.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the waiver application accordingly. *Decision of Interim District Director Gerard Heinauer*, dated March 18, 2006.

On appeal, counsel maintains that the applicant departed from and returned to the United States (pursuant to advance parole) after applying for permanent residence on the advice of his former counsel, and was unaware that "he risked being declared inadmissible" by leaving the country. Counsel asserts that the applicant's removal from the United States would result in extreme hardship to his U.S. citizen spouse who would suffer psychologically without him and would experience stress at not being able to care for him after his recent heart attack. Counsel points out that although the applicant and his spouse were only married in 2005, they have known each other for much longer. Counsel also maintains that the applicant's spouse would experience financial hardship from being denied "a significant source" of her current income, the applicant's salary of \$250,000 per year, and would be unable to afford the mortgage on their new home with her income and the applicant's uncertain and invariably reduced income overseas. Counsel asserts that the applicant's spouse would suffer extreme hardship if she returned to the U.K. with the applicant because she would be separated from her family, lose her businesses and be forced to adjust to a foreign culture.

The record contains affidavits from the applicant and his spouse; a copy of their marriage certificate; a copy of home mortgage documents; copies of phone records showing calls between the applicant and his spouse; copies of photographs of the applicant his spouse; and various receipts of purchases by the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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 [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 record reflects that the applicant was first admitted into the United States in H-1B status on June 15, 1995. The applicant's status expired on July 1, 2001. The applicant filed his adjustment application on June 21, 2002. The applicant subsequently departed from the United States and returned with advance parole on numerous occasions. On his waiver application, the applicant indicates that his last departure from the United States occurred on April 2, 2005, and that he returned on April 10 of the same year. Therefore, the applicant accrued unlawful presence from July 1, 2001 through June 21, 2002, a period of 355 days. The applicant has not disputed that he was unlawfully present in the United States during this period and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

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 wife faces extreme hardship if her husband is refused admission. The AAO recognizes that the applicant’s wife will suffer emotionally as a result of separation from the applicant if she chooses not to return with him to the U.K. However, her situation is not atypical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

There is insufficient evidence in the record corroborating the applicant’s assertions that he would be unable to find suitable employment, and thereby provide financial support to the applicant, should he return to the U.K.

Although the applicant's assertions in this regard are relevant and are taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Furthermore, the record shows that the applicant owns her own businesses and is able to support herself financially.

There is also insufficient evidence that the applicant's wife would suffer extreme hardship if she relocated to the U.K. The AAO recognizes that she would be farther away from her immediate family in Michigan, but the applicant has not submitted evidence showing that his wife would be unable to communicate with or visit her family in the United States much as she does now. The applicant's wife would not be forced to learn a new language to function normally in English society. She has indicated that she would be forced to give up her graphics arts and massage therapy businesses, but she has failed to demonstrate that she could not operate businesses or obtain employment in these fields in the U.K.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his 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 he merits a waiver as a matter of discretion.

In proceedings for 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. *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.