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U.S. Citizenship
and Immigration
Services

H3

FILE:

Office: MIAMI, FLORIDA

Date: MAY 30 2007

IN RE:

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 District Director, Miami, Florida, 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 Hungary, 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 remain in the United States with his wife.

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

On appeal, the applicant contends that his wife would suffer extreme hardship if he is required to return to Hungary. 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 his nonimmigrant status expired on February 8, 2003. He filed Form I-485, Application to Register Permanent Residence or Adjust Status, on January 9, 2005. The applicant was issued Form I-512, Authorization for Parole of an

Alien into the United States, and used the advance parole authorization to depart and reenter the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act.¹ The applicant therefore accrued unlawful presence from February 8, 2003, the date his previous status expired, until January 9, 2005, the date the Form I-485 was filed. In applying to adjust his status to that of a Lawful Permanent Resident, the applicant is seeking admission within ten years of his departure from the United States. 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.

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 available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, so hardship to the applicant or anyone else cannot be considered, except as it may affect the applicant's wife.

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

¹ See Memorandum from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, *Unlawful Presence*, HXADN 70/21.1.24-P (June 12, 2002).

whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's wife is a thirty-year-old citizen of the United States. She and the applicant have been married since December 1, 2004.

The record contains an undated affidavit from the applicant, in which he states that if his wife were to accompany him to Hungary, the separation from her family would be unbearable, as they would not have enough money for her to fly back and forth. He also states that she is currently attending school at Barry University; that, if she does not complete her studies, she will have to repay her outstanding school loans; that she would not be able to repay the loans and, therefore, her credit would be destroyed; that his wife does not speak, read, or write Hungarian; and that she would be unemployable in Hungary.

The record also contains two affidavits from the applicant's wife. In her first affidavit, dated April 9, 2006, she states that her father has diabetes; that her mother has multiple sclerosis; that she drives both of her parents to medical appointments and helps them to manage their conditions; details her other family ties to the United States; discusses her employment history; and states that she is currently studying nursing at Barry University.

In her second affidavit, dated August 4, 2006, she states that she would suffer extreme hardship if the applicant's waiver applicant were denied. She states that the applicant helps her care for her parents; states that she would not be able to handle her family responsibilities without the applicant's assistance; states that the thought of raising the couple's children in Hungary is truly upsetting; provides additional information regarding each of her parents' chronic illnesses; states that she is currently in her senior year in Barry University's nursing program; states that she would not be able to practice nursing in Hungary and therefore would not be able to repay her student loans; and states that she does not speak the Hungarian language.

The record also contains a psychological evaluation of [REDACTED] Psy.D., a licensed clinical psychologist, dated August 3, 2006. Dr. [REDACTED] opines that the applicant's wife would suffer extreme hardship regardless of whether she remained in the United States without the applicant or accompanied him to Hungary. Dr. [REDACTED] states that if she were to relocate to Hungary, the applicant's wife would not be able to cope with the stress of such an unbearable situation. She states that if she remained in the United States without the applicant, her emotional state would likely deteriorate, rendering her unable to care for herself or for her parents.

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).

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 will face extreme hardship if the applicant's waiver application is denied. Particularly if she remains in the United States without him, the record demonstrates that she 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 her situation, the financial strain of visiting the applicant in Hungary 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. The applicant's wife 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 that, "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." See *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). A spouse's desire not to relocate does not warrant granting a waiver, in the absence of specific facts establishing that his doing so will result in extreme hardship to her. As noted, the applicant has not established this fact. 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 record also establishes that although she would face cultural adjustment and career setbacks if she accompanied the applicant to Hungary, such adjustment and setbacks are common and to be expected by individuals in the applicant's wife's situation.

Nor does Dr [REDACTED] evaluation establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's wife and Dr. [REDACTED]. The record fails to reflect an ongoing relationship between any mental health professional and the applicant's wife or any history of treatment. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview with the applicant's wife, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

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 finds that the District Director properly denied the waiver application.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

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.