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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H3

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FILE: [Redacted] Office: FRANKFURT, GERMANY Date: NOV 07 2007

IN RE: Applicant: [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 Officer in Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native of Austria and a citizen of Germany, entered the United States without inspection in May 1989. He was apprehended and given voluntary departure. He did not comply with the order of voluntary departure. He departed on an unknown date in 1989 and reentered without inspection in 1992. He subsequently departed the United States in April 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in April 2005. The applicant 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. The applicant seeks a waiver of inadmissibility in order to reside with his U.S. citizen spouse in the United States.

The officer in charge 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 Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated December 9, 2005.

In support of the appeal, counsel submits a brief, dated February 2, 2006; an affidavit from the applicant's spouse, a U.S. citizen; articles about Germany's unemployment rate; a psychological evaluation regarding the applicant's spouse; support letters on behalf of the applicant and his spouse; congratulatory cards sent to the applicant and his spouse following their wedding; and photos of the applicant and his spouse with family and friends. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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...

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act resulting from a violation of 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. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's spouse. 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; 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.

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).

To begin, counsel asserts that the applicant's spouse would experience emotional hardship were the applicant unable to reside in the United States. As stated by counsel, "[redacted] [the applicant's spouse] is also experiencing extreme emotional hardship brought on by the excludability of her husband [the applicant]..." *Brief in Support of Appeal*, dated February 2, 2006. Counsel has provided a report from a licensed psychologist, [redacted], to support his assertions [redacted] states that the applicant's spouse "...is a 51 year old married female. She has sought a psychological evaluation at the suggestions of her attorney...Although [redacted] [the applicant's spouse] is undoubtedly experiencing significant distress and hardship as a result of the forced disruption of her marriage and the resultant financial burden, she has thus far been able to maintain psychological stability and adequate functioning. There is some suggestion in the test data that her coping resources may become overwhelmed if some resolution is not obtained within the next few months...The desired outcome of having her husband [the applicant] return to the United States would of course be psychologically optimal. However, should that continue to be denied, [redacted] may find counseling an important source of aid and bolstering for her coping ability." *Report of Psychological Evaluation from [redacted] D., Licensed Psychologist*, dated January 29, 2006.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, 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.

In addition, the AAO notes that despite the mental health concerns referenced in the psychologist's report, the record indicates that the applicants' spouse is able to maintain employment; her mental health issues relating to the applicant's absence clearly do not hinder her ability to work and assist in supporting herself and the applicant who is residing in Germany. Finally, it has not been established that it would be an extreme hardship for the applicant's spouse to visit the applicant, whether in Germany or in any other country to which the applicant relocates, on a regular basis, were he unable to reside in the United States.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she 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 based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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.

Moreover, the applicant's spouse asserts that she will suffer financial hardship if the applicant were unable to reside in the United States. As stated by the applicant's spouse "...it will be an extreme hardship on Wolf [the applicant] and me if we have to support two separate households. We will incur additional debt for long-distance calls and travel expenses just to try to maintain some semblance of a normal life. We also have all of our belongings still in storage, and I will have to find a way to transport his belongs to him..." *Affidavit of* [REDACTED] dated January 27, 2006.

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."); *Shooshtary 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).

Although the applicant's spouse may need to make alternate arrangements with respect to her employment and housing situation, it has not been established that such arrangements would cause her extreme hardship. Moreover, counsel provides no evidence to corroborate the applicant's spouse's assertions that the applicant is unable to find employment in Germany, or any other country of his choosing, thereby assisting the applicant's spouse with the household expenses. Although counsel provides articles regarding the unemployment rate in Germany, the articles are general in nature and do not specifically correlate to the applicant's personal situation. 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)).

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. In this case, the applicant's spouse states “...My mother is 75 years old and has health problems. It would be an extreme hardship for me to live in another country, and not be able to return when she needed me...Neither Wolf [the applicant] nor I want to live in Germany. We cannot obtain employment and have no support group.” *Supra* at 3. Counsel has not provided any documentation regarding the applicant's spouse's mother's medical condition, nor evidence to support her dependence on the applicant's spouse. While the AAO recognizes that the applicant's spouse's parent may need to make alternate arrangements with respect to her health and living situation were the applicant's spouse to reside abroad with the applicant, it has not been established that such alternate arrangements would cause the applicant's spouse extreme hardship.

The applicant's spouse further states that she is unable to find employment in Germany as she does not speak the language. Pursuant to the record, the applicant's spouse is a legal secretary for a law firm. No evidence has been provided that corroborates the fact that the applicant is unable to find a position, comparable in pay and responsibilities, in Germany. In the alternative, counsel indicates in his brief that since the applicant returned to Germany, the applicant's spouse has been returning to the United States “...periodically on a contract basis to support herself and her husband...” *Brief in Support* at 3. Counsel does not explain why such an arrangement could not continue on a permanent basis, thereby allowing the applicant's spouse to reside in Germany with the applicant and financially support them both, while permitting the applicant's spouse to see her mother on a regular basis.

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 will face extreme hardship if the applicant is removed from the United States. 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 and emotional

hardship she would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were unable to reside in the United States. 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.

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 remains entirely with the applicant. 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.