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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H3

FILE: [REDACTED]

Office: FRANKFURT, GERMANY

Date: NOV 29 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:

SELF-REPRESENTED

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, 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 citizen of Poland, initially entered the United States as a visitor on November 14, 2002, with authorization to remain until May 13, 2003. The applicant remained in the United States beyond May 13, 2003 without authorization. The applicant subsequently departed on August 15, 2004. The applicant accrued unlawful presence from May 14, 2003 until her departure on August 15, 2004. 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 her naturalized 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 November 25, 2005.

In support of the appeal, the applicant submits the following: a letter from the applicant's spouse, dated September 19, 2005; a letter and translation from a psychiatry specialist in regards to the applicant's spouse, dated September 9, 2005; a letter from the applicant, dated December 20, 2005; and a letter from a psychologist in regards to the applicant, dated December 16, 2005. 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...

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. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or the applicant's spouse's son from a previous marriage cannot be considered, except as it may affect the applicant's spouse.

In *Matter of [REDACTED]*, 21 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).

The applicant asserts that the applicant's spouse will experience emotional and psychological hardship were the applicant unable to reside in the United States. As stated by the applicant's spouse "...We have been separated for 1.5 years because of the refusal to grant her the visa, which has been the reason for deep suffering for both of us. I request you with all my heart to let her come to the United States because I am unable to live without her. My life has been pointless since we were separated. I have developed severe depression, for which I am being treated at present. My emotional condition is characterized by continuous dejection, loss of self-confidence and fear of losing my family, which does not allow me to function normally..." *Letter from [REDACTED]*, dated December 19, 2005.

In support of the applicant's spouse's statements, a letter is provided by *[REDACTED]* Psychiatry Specialist, dated September 9, 2005. *[REDACTED]* states that the applicant's spouse has been diagnosed with "...adaptation problems identified as depression syndrome. His condition is of situational origin and connected with his separation from his wife, which makes everyday functioning difficult for him..." *Letter and Translation from [REDACTED], Psychiatry Specialist*, dated September 9, 2005.

The letter provided by *[REDACTED]* does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering her findings speculative and diminishing the letter's value to a determination of extreme hardship. Moreover, although the psychiatry specialist references that the applicant's spouse has been diagnosed with depression, she makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. Finally, it has not been established that the applicant's spouse's situation is extreme as he is able to run a successful transportation

business, which in 2003 provided the applicant's spouse an income of \$148,504, as documented by his executed Form I-864, Affidavit of Support.

The record establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's inability to reside in the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212 (a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's spouse 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 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.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad to reside with the applicant based on the denial of the applicant's waiver request. In this case, the applicant's spouse first states that he will suffer economic hardship were he to relocate with the applicant. As stated by the applicant's spouse, "...The type of services I have provided for over 13 years now is a narrow and specific branch of transport...I possess specialized equipment, in which I have invested large sums of money. Having run the business for such a long period of time has resulted in gaining a wide range of customers. Constant trips to Poland in order to stay with my wife make it impossible for me to do my job, which may lead to loss of customers and having to close down my business...I want to stress that this is the only source of our living. The loss of my ability to run a business may also lead to difficulties in my effecting child support payments due to my son..." *Letter from [REDACTED]* dated September 12, 2005.

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 record does not contain any corroborating evidence of the applicant’s spouse’s business, such as financial documentation confirming its viability and profitability and level of hiring, and documentation that confirms that without the applicant’s spouse’s full-time presence in the United States, the business will not survive. Moreover, it has not been established that the applicant’s spouse, involved in the transportation industry, would not be able to find a similar position, with comparable pay, in Poland, his birth country, thereby providing the financial support that the applicant’s spouse and his family require. Finally, no evidence has been provided that explains why the applicant is unable to obtain employment in Poland, thereby assisting the applicant’s spouse with respect to the household finances. 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 applicant’s spouse also contends that he will suffer emotional hardship were he to relocate with the applicant, as he has a son from a previous marriage, 13 years old at the time the appeal was filed, that resides in the United States. As stated by the applicant’s spouse, “. . .If I left the country and had no contact with my son, it would have a negative impact on his further development, and his mother would never give her consent for his visits in Poland. . .” *Supra* at 1-2. No evidence has been provided that establishes the applicant’s spouse’s current level of contact with his son. Moreover, it has not been established that the applicant’s son would be unable to visit the applicant’s spouse in Poland on a consistent basis to ensure the applicant’s spouse’s continued physical presence in his son’s life. A mere assertion that the child’s mother would prohibit such visits does not suffice. Finally, nothing prohibits the applicant’s spouse from returning to the United States on a regular basis to see his son. While the AAO understands that the applicant’s spouse may need to make alternate arrangements with respect to visitation with his son, it has not been established that such arrangements would cause extreme hardship to the applicant’s spouse.

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 she 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.