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



U.S. Citizenship
and Immigration
Services

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OCT 15 2007

FILE:

Office: MIAMI (JACKSONVILLE), FLORIDA

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 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 District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Netherlands who 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found 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 Inadmissibility (Form I-601). *Decision of the District Director*, dated November 13, 2001.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship should the applicant be denied adjustment of status. *Brief in Support of Appeal*, at 7, dated October 8, 2004.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's mother-in-law's statement, letters related to the applicant's professionalism, the applicant's court records and information on the applicant's mother's medical problems. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that the applicant was admitted to the United States with a visitor visa on May 28, 1998. The applicant's visitor status expired on August 27, 1998. The applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, on November 30, 2000 and he subsequently departed the United States between April 2001 and June 21, 2001 with an advance parole document. The exact date of departure is not in the record.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of authorized stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations*, dated June 12, 2002. The applicant accrued unlawful presence between August 27, 1998, the date his visitor status expired, and November 30, 2000, the date of his proper filing of the Form I-485. In applying to adjust his status to that of lawful permanent resident, the applicant is seeking admission within 10 years of his last departure from the United States, which was between April 2001 and June 21, 2001. The applicant is 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 and subsequently departing the United States.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to a non-qualifying relative is not a permissible consideration in 212(a)(9)(B)(v) waiver proceedings except to the extent that such hardship may affect the qualifying relative. 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).

Counsel includes a discussion of relevant case law and factors that relate to extreme hardship. *Brief in Support of Appeal*, at 3-7.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to the Netherlands or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to the Netherlands. This prong of the analysis is not addressed. Therefore, the AAO finds that

extreme hardship has not been established in the event that the applicant's spouse relocates to the Netherlands.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that the applicant is the breadwinner in their family, he is her soul mate and best friend, they have a live-on boat together, they have purchased property to build their home on and their investments are only possible with their combined income and efforts. *Applicant's Spouse's Statement*, undated. The AAO notes that separation commonly creates emotional stress and financial and logistical problems. The record does not include substantiating evidence of emotional or financial hardship, other than the applicant's spouse's statement. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). In addition, there is no evidence of the effects of the applicant's mother's illness on the applicant's spouse. Based on the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

U.S. 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, *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.

A review of the documentation in the record fails to establish extreme hardship to the applicant's spouse in the event that the applicant is found inadmissible. 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) of the Act, the burden of proving eligibility remains entirely 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.