



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: MOSCOW, RUSSIA

DATE: SEP 21 2007

IN RE:

APPLICANT:



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:



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 application was denied by the Officer in Charge, Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant is a native and citizen of Georgia. 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 presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge found that the applicant had failed to establish her husband will suffer extreme hardship if she is denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts that her husband needs her, and she indicates that her husband will suffer emotional and physical hardship if she is denied admission into the United States.

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

[A]ny 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.

The record reflects that the applicant was admitted into the United States with a B2 nonimmigrant visitor visa on September 12, 1999. The applicant was authorized to remain in the United States until October 1, 1999. The applicant did not depart from the United States. She was arrested by the Immigration and Naturalization Service (Legacy INS) on April 30, 2001, based on her unlawful presence in the United States. The applicant subsequently applied for asylum. Her asylum claim was denied for failure to comply with the one year filing deadline requirement. An Immigration Judge ordered the applicant removed from the United States on October 25, 2001. A subsequent Board of Immigration Appeals (Board) appeal by the applicant was dismissed on February 22, 2002. Review of the Board's decision was denied by the Fifth Circuit Court of Appeals on June 6, 2002. The record reflects that the applicant met her U.S. citizen spouse in March 2002. She and her husband were married two months later, on May 14, 2002. The applicant was removed from the United States on June 30, 2003. The above facts demonstrate that the applicant was unlawfully present in the U.S. for more than one year. She is therefore subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department 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.

The record reflects that the applicant is married to a U.S. citizen. The applicant's spouse [REDACTED] is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.¹

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Id.* *See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, the U.S. Supreme Court 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. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Less weight is given to equities acquired after a deportation (removal) order has been entered. *See Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991.) The weight given to hardship to a U.S. citizen or lawful permanent resident spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992). In *Cervantes-Gonzalez*, *supra*, the Board noted that the alien's wife knew that he was in deportation proceedings at the time they were married. The Board stated that this factor went to the wife's expectations at the time of her marriage, because she was aware that she might face the decision of parting from her husband or following him to his country in the event that he was ordered deported. The Board found this factor to undermine the alien's assertion that his wife would suffer extreme hardship if he were deported from the United States.

In the present matter, the record reflects that the applicant was ordered removed from the United States on October 25, 2001. The applicant married [REDACTED] several months later on May 14, 2002. Any hardship

¹ The Officer in Charge notes the likelihood of a spurious marriage between the applicant and [REDACTED]. However, because the Form I-130, Petition for Alien Relative was approved by U.S. Citizenship and Immigration Services (CIS) on March 23, 2004, the applicant's marriage to [REDACTED] will be deemed to be bona fide for purposes of analyzing the present case.

pertaining to the applicant's separation from her husband will thus be accorded diminished weight.

The record contains the following evidence relating to [REDACTED] extreme hardship claim:

A January 28, 2003, letter written by [REDACTED] stating that he met the applicant in March 2002, and that he and the applicant were married on May 14, 2002. [REDACTED] states that his marriage has changed his life greatly, and that he and the applicant take care of each other and offer each other support in every way. [REDACTED] states that he and the applicant share household and yard chores, and he asks that he and his wife be allowed to continue living together.

The record contains no other evidence of hardship to the applicant's husband.

Upon review of the evidence, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if the applicant is denied admission into the United States. As previously noted, hardship pertaining to the applicant's separation from her husband is accorded diminished weight based on the fact that the applicant was under an order of removal at the time of her marriage to [REDACTED]. Furthermore, the affidavit contained in the record fails to mention or assert any hardship that [REDACTED] will suffer if he moves to Georgia to be with his wife. The affidavit evidence additionally fails to establish that [REDACTED] will suffer emotional, physical or any other hardship beyond that commonly associated with removal if he remains in the United States without the applicant.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.