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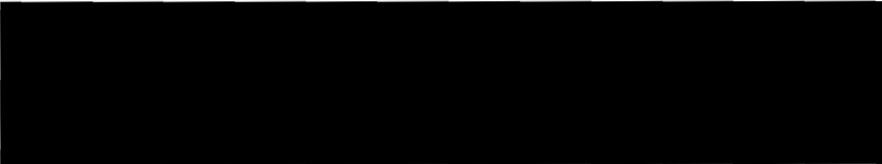
Applicant:



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 waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Romania 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. The applicant's spouse, [REDACTED] is a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated February 21, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States on February 29, 2001 on a K1 fiance visa. The applicant did not marry the petitioner; however, she married [REDACTED] on April 17, 2003 and voluntarily departed from the United States on April 11, 2005. Thus, the record conveys that the applicant accrued more than one year of unlawful presence and when she voluntarily departed from the country she triggered the ten-

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

year-bar. Consequently, the OIC was correct in finding her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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

- (v) Waiver. – The Attorney General [now Secretary, 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 inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, which in this case is the applicant’s wife. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The record contains letters, a marriage certificate, birth certificates, divorce records, a psychological report, and other documents.

The April 7, 2005 letter by [REDACTED] states that he met his wife in 2000 and that she recently passed her dental board exams. In the letter he conveys that his wife provides constant love and support to him so that he feels good about himself without alcohol. He states that she researched a diet and exercise program to reduce his blood pressure and weight and that for the past five years his wife has been his constant companion and best friend.

In the April 10, 2006 letter [REDACTED] states that he has been living in a nightmare since he learned about his wife’s denial. He states that his life is not worth living without the applicant, and that after he received the denial letter he started drinking and cannot sleep. He states that he dreads work and that he has made unsafe decisions while working and driving. [REDACTED] states that his father had committed suicide after his wife left him.

The document dated April 4, 2005 and prepared by [REDACTED], M.D., M.S., states that [REDACTED] complains of insomnia, extreme anxiety, sadness, and increase in alcohol consumption. [REDACTED] states that [REDACTED] indicates that the symptoms started a month ago when he learned that his wife will be deported. [REDACTED] conveys that [REDACTED] has never seen a psychiatrist in the past, but several years ago he was a heavy drinker. [REDACTED] states since [REDACTED] started his relationship with his wife he significantly reduced his consumption of alcohol. [REDACTED]’s diagnosis of [REDACTED] is Axis I, Adjustment disorder with depressed and anxious mood, alcohol dependence in partial remission. [REDACTED] indicates that [REDACTED] “has recently decompensated in the light of his wife leaving the contry [sic].” Dr. [REDACTED] states that [REDACTED] has no support system except for his wife, as he has had no contact for over two years with his parents or siblings. [REDACTED] states that [REDACTED] has started drinking more

recently, and that it is “obvious that his wife has brought stability in his life” and that with her he was more productive at work and had significantly reduced alcohol consumption.

The March 16, 2006 letter by _____ Ph.D., conveys that he is concerned that _____ may have a psychiatric decompensation in the near future caused by separation from his wife. He states that Mr. _____ is a recovering alcoholic whose father was an alcoholic who eventually committed suicide.

The March 10, 2006 letter by _____ M.D., F.A.C.P., indicates that _____ suffers from hypertension, excessive alcohol consumption, extreme depression and anxiety, and moderate obesity. Dr. _____ states that he has grave concerns about _____ mental health.

The record contains a letter from _____ by the Sea, in which _____, the Director of Engineering, conveys that on account of the decline in _____ work performance over the past year, he has replaced him as general contractor.

The letter dated April 8, 2006 by _____ of _____ conveys that as _____ has not been satisfied with _____ work performance, he will have to look elsewhere for a “service guy to keep my business running.”

On appeal, counsel states that _____ is a recovering alcoholic who is undergoing psychotherapy sessions. She states that _____, a self-employed plumber and electrician, has not able to concentrate on work since the denial of his wife’s immigrant visa and has lost work due to this.

The AAO has carefully considered all of the submitted evidence in rendering this decision.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant has established that her husband would endure extreme hardship if he remains in the United States without her.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record conveys that the separation of [redacted] from his wife has affected his work performance and has caused him to excessively increase his consumption of alcohol. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant's husband, if he remains in the United States, rises to the level of extreme hardship as defined by the Act. The record before the AAO is sufficient to show that the emotional hardship experienced by the applicant's husband is unusual or beyond that which is normally to be expected upon removal.

The present record is insufficient to establish that the applicant's husband would experience extreme hardship if he joined the applicant in Romania.

The applicant makes no hardship claim if her husband were to join her to live in Romania.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record establishes that the applicant's husband would experience extreme hardship if he were to remain in the United States without her, but it fails to support a finding of significant hardships over and above the normal economic and social disruptions if he were to join the applicant to live in Romania. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.