

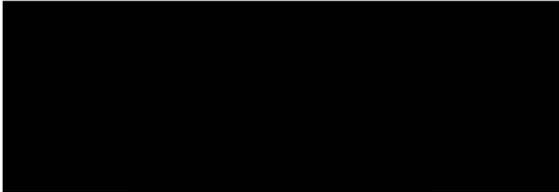
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FILE:

Office: CHICAGO FIELD OFFICE

Date: JAN 31 2008

IN RE:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Israel, was found inadmissible to the United States under 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 is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain the United States with his wife.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife would suffer extreme hardship if he is required to return to Israel. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he entered the United States with a visitor's visa on February 15, 2002. Although his status was to expire on August 14, 2002, he filed a timely Form I-539, Application to Extend/Change Nonimmigrant Visa (Form I-539). In January 2003 he filed a second Form I-539 to change his status from B-2 visitor to F-1 student. However, both

Forms I-539 he filed were ultimately denied. On April 27, 2005 he filed an I-485 application to register permanent resident or adjust status (Form I-485). As a result of his September 14, 2005 departure from the United States, the applicant accrued unlawful presence from August 14, 2002 until April 27, 2005, the date he filed Form I-485. The applicant is, therefore, 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. The applicant does not contest the director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

The record contains many references to the hardship that the applicant's United States citizen stepdaughter will suffer if the applicant is refused admission into the United States. However, 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. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship that the applicant or his stepdaughter will face cannot be considered, except as it may affect the applicant's wife.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel submitted the Form I-290B, Notice of Appeal, on April 25, 2007. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within thirty days. The AAO did not receive this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to counsel on October 26, 2007, requesting that the brief and/or additional evidence be sent within five business days. Counsel did not respond to the AAO's fax. Thus, the AAO deems the record complete and ready for adjudication.

The applicant's wife is a thirty-four-year-old citizen of the United States. She and the applicant have been married since April 5, 2005. The record contains affidavits from the applicant and his wife, both of which were discussed in the District Director's decision. In her denial, the District Director noted that none of the assertions in these affidavits were supported by documentary evidence.

In his April 25, 2007 letter, counsel states that the appeal will provide the applicant with the opportunity "to support previous and current statements." However, as noted previously, the AAO never received counsel's brief and/or additional evidence. The record, as it currently stands, has not changed since the time of the Field Director's adjudication.

In her May 5, 2006 letter, the applicant's wife states that she and the applicant, together with her daughter from a previous relationship, have been living together as a family; that she had been a teacher since September 2000, but was displaced in August 2004 after being deemed not "highly qualified"; that she had been taking graduate courses in order to be deemed "highly qualified," but could only afford classes that were funded through grants; that she could not afford tuition after losing her job; that she was unable to find a similarly-paying position and had to accept public assistance; that her daughter suffers from chronic constipation, a medical condition which causes her to have no control over her bowel movements, and requires special attention from her daycare provider; that the only way she was able to continue her coursework become "highly qualified" was with the assistance of the applicant, who paid her tuition and watched her daughter; that she has been reinstated to her previous position; that the applicant is her daughter's father figure; that she loves the applicant a great deal; that she would face extreme hardship if the waiver were denied because she would be unable to afford tuition and childcare, and would thus lose her job again; that she cannot travel to Israel with the applicant because she would be unable to assimilate or gain Israeli citizenship, as she is not Jewish and does not speak Hebrew.

In his May 12, 2006 letter, the applicant states his great love for his wife; that he loves his wife and stepdaughter dearly; that he did not realize traveling with an advance parole document would subject him to inadmissibility; that his stepdaughter's biological father would not allow his wife to bring her daughter to Israel; and that bringing his wife and stepdaughter to Israel would cause them extreme hardship, as neither are Jewish or speaks Hebrew. He also discusses a business into which he invested, which has employed as many as twelve individuals.

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).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to return to Israel, regardless of whether she joins him in Israel or remains in the United States. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife will face extreme hardship if the applicant is required to depart the United States. The record does not demonstrate that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. As noted by the Field Director, the record contains no evidence to document the claims made by the applicant and his wife regarding the financial difficulty the applicant’s wife would face upon the applicant’s removal. There is no evidence to document her claims regarding the costs of tuition, daycare, or her mortgage. There is no evidence to document her claims that her daughter requires specialized care. There is no evidence that her daughter’s husband would object to her taking her daughter to Israel. Nor has the applicant’s wife explained why she cannot obtain a student loan to finance her education. Simply 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)).

Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Israel, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law. The applicant has not established that his wife would face hardship beyond that normally faced by others facing the removal of a spouse. Nor has the applicant established that his wife would face extreme hardship if she joined him in Israel, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to

establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

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