

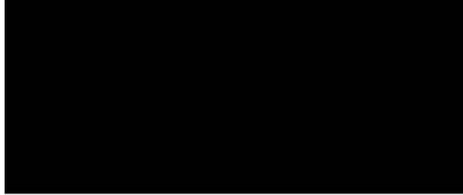


U.S. Citizenship
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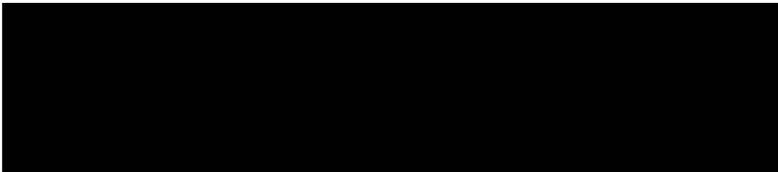


FILE:  Office: CALIFORNIA SERVICE CENTER Date: JUL 08 2008

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.

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Morocco 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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his United States citizen wife.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated April 14, 2006.

On appeal, the applicant, through counsel, contends that the "Director erroneously determined that [the applicant's] wife would not suffer exceptional hardship if [the applicant] were unable to remain in the United States." *Form I-290B*, filed May 16, 2006.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's wife, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at 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.

In the present application, the record indicates that on April 15, 1999, the applicant initially entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until October 13, 1999. The

applicant failed to depart the United States when his authorization expired. On January 3, 2002, the applicant married [REDACTED], a United States citizen, in New York. On February 25, 2002, the applicant's wife filed a Form I-130 on behalf of the applicant. At the same time, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On an unknown date after May 30, 2002, the applicant departed the United States. On August 18, 2002, the applicant reentered the United States on advance parole. On September 8, 2005, the applicant's Form I-130 was approved. On October 3, 2005, the applicant filed a Form I-601. On April 14, 2006, Director denied the Form I-485 and Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from October 13, 1999, the date the applicant's authorization to remain in the United States expired, until February 25, 2002, the date the applicant filed his Form I-485. The applicant is attempting to seek admission into the United States within 10 years of his 2002 departure from the United States. 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 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.

The applicant, through counsel, claims that the applicant's wife would face extreme hardship if the applicant were removed to Morocco. The applicant's wife states "that a forced separation at this point from [the applicant] would result in extreme hardship to [her] if he were compelled to leave the United States. The fact of the matter is that he established his family in the United States.... [She is] completely dependent on [the applicant] for emotional support." *Affidavit from [REDACTED]*, dated September 29, 2005. Counsel claims that "[b]ecause of [the applicant's wife's] ties to the United States, [she] would suffer extreme hardship if [the applicant] were removed." *Appeal Brief*, page 5, filed June 29, 2006. Counsel states the applicant's wife was "born in the United States...she would have no ties in Morocco other than her husband." *Id.* Counsel claims that if the applicant's wife joined the applicant in Morocco, "it is unlikely that she would be able to pursue her current career as a medical assistant, for which her current licensing would not apply." *Id.* The AAO notes that it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in Morocco. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Morocco.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, maintaining her employment and in close proximity to her family. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims that "being separated from [the applicant] presents grave concerns for her emotional well-being." *Id.* at 6. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's wife is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states that if the applicant's wife stays in the United States without the applicant, "she would...lose her husband's contribution to their household income." *Id.* at 5. The AAO notes that the applicant is employed as a taxi driver; and it has not been established that he would be unable to contribute to his wife's financial wellbeing from a location outside of the United States. *Id.* Additionally, the AAO notes that based on the submitted Wage and Tax Statements (Form W-2) and U.S Individual Income Tax Returns (Form 1040A), it appears that the applicant's wife is the primary wage earner in the family, and it has not been established that she would be unable to support herself. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's spouse faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.