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U.S. Citizenship  
and Immigration  
Services

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H3

[REDACTED]

FILE:

Office: HONOLULU, HI

Date: **JUN 05 2008**

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the District Director, Honolulu, Hawaii. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the Form I601 will be denied.

The record reflects that the applicant is a native and citizen of New Zealand. 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 his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that evidence in the record establishes his wife and son (born July 18, 2003) will suffer extreme hardship if the Form I-601 is denied.

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

[A]ny alien . . . 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.

In its decision, *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006), the Board of Immigration Appeals (Board) clarified that a:

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . .

In the present matter, the applicant was admitted into the United States on January 7, 2000, as a nonimmigrant under the Visa Waiver Program. The applicant remained in the United States beyond the 90-day authorized period. The applicant married a U.S. citizen on August 10, 2001. He filed a Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485) on March 11, 2002. The record reflects that the applicant departed the United States in July 2005, and he was paroled into the United States with advance parole authorization on July 19, 2005. The applicant departed the United States again around November 2005, and he was paroled into the United States with advance parole authorization on November 25, 2005.

Because the applicant was unlawfully present in the United States for more than one year between the expiration of his authorized stay and March 11, 2002, when he filed a Form I-485, the applicant is 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 [212(a)(9)(B)](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 matter, the applicant is married to a U.S. citizen. The applicant's wife is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act, extreme hardship waiver purposes. It is noted that U.S. citizen and lawful permanent resident children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Hardship claims made with regard to the applicant's U.S. citizen son may therefore only be considered to the extent that they relate directly to extreme hardship suffered by the applicant's wife (Mrs. Latu.)

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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. *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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. *Perez v. INS, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991.)

The applicant asserts, through counsel, that the denial of his Form I601 application will cause extreme financial and social hardship to his wife. The applicant indicates that his wife would be unable to run their family masonry business and his youth canoe club, and that both would be forced to close if he returned to New Zealand. The applicant indicates that his wife would also be unable to afford the mortgage payments on their home, and that his family would lose their home. In addition, the applicant indicates that his wife would be unable to pay school tuition for their son, and he asserts that his wife would suffer emotional hardship if she and her son were separated from the applicant. In the alternative, the applicant indicates that his wife would suffer extreme emotional hardship if she and their son moved with the applicant to New Zealand, because she would be separated from her entire family and life in Hawaii.

The record contains the following evidence relating to the applicant's extreme hardship claim:

Affidavits written by the applicant and his wife describing their loving relationship and family, their efforts to purchase a home, and their success in starting a masonry business and a community non profit youth canoe club. The applicant and his wife indicate that the applicant runs their family masonry business, and that he is the main financial provider for the family. [REDACTED] works full-time for a medical service and obtains medical insurance for the family, and a smaller income. The applicant and his wife indicate that [REDACTED] would be unable to run the family masonry business and the community canoe club created by the applicant, and they state that [REDACTED] would lose their house and go into debt without the applicant's financial support. The applicant and his wife also state that Mrs. [REDACTED] would be unable to pay for their son's preschool. They state that [REDACTED] was born and raised in Hawaii, and that she and their son would miss [REDACTED]'s family if they moved to New Zealand with the applicant.

A May 31, 2006, letter from [REDACTED]'s employer reflecting that she works full time and earns \$23, 899.20 a year.

A May 1, 2006, preschool tuition statement reflecting the applicant's son's enrollment in preschool, and reflecting that tuition for the year was \$1516.00.

Bank mortgage and line of credit statements reflecting that the applicant's monthly loan payment is \$2429.78.

Auto loan and auto insurance policy statements for three vehicles.

Joint federal tax returns for the years 2003 through 2005.

Business license and organization documentation for the family masonry business and the applicant's non-profit community canoe club.

Letters from individuals attesting to the applicant's good character, and to the value of the non profit youth canoe club to the community.

Photos of the applicant with his wife and son.

The AAO finds, upon review of the evidence, that the applicant has failed to establish that his wife would suffer extreme hardship if she remained in Hawaii without the applicant. "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 AAO notes further that the, "extreme hardship requirement . . . was not enacted to insure that the family members of excludable [or removable] aliens fulfill their dreams or continue in the lives which they currently enjoy." *Shooshtary v. INS*, 39 F.3d 1049, 1051, (9<sup>th</sup> Cir. 1994.) In the present matter, the evidence reflects that [REDACTED] is employed full-time and that her job provides an income and medical insurance benefits to the family. The evidence fails to establish that the applicant's wife, and/or his employees would be unable to continue operating the family masonry business. The evidence additionally fails to establish that the applicant's wife would have to stop working due to an inability to pay for preschool expenses for her son. Moreover, it is noted that the applicant's son is now kindergarten-age,

and may no longer attend preschool. The AAO notes further that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), and the AAO finds that the applicant failed to establish that his wife would suffer emotional hardship beyond that normally experienced upon the removal of a family member if she remained in Hawaii without the applicant.

The applicant has additionally failed to establish that his wife would suffer extreme hardship if she moved with the applicant to New Zealand. The evidence reflects that N [REDACTED] was born and raised in Hawaii and that she would miss her family if she relocated to New Zealand. The record contains no other evidence of hardship that [REDACTED] would suffer in New Zealand. As noted above, emotional hardship caused by severing family and community ties is a common result of removal and does not constitute extreme hardship. *Matter of Pilch, supra*. The AAO notes further that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986.)

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 his wife would suffer extreme hardship in New Zealand if the applicant were 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. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

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