



U.S. Citizenship  
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[Redacted]

FILE: [Redacted] Office: BANGKOK, THAILAND Date: **MAR 26 2008**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 waiver application was denied by the District Director, Bangkok, Thailand and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Australia 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 ten years of his last departure from the United States. The applicant is the husband of a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director determined that the record failed to establish that the applicant's spouse would suffer extreme hardship if his waiver request were to be denied, noting that the applicant had failed to prove that his spouse would suffer hardship over and above the normal economic and social disruptions created by the removal of a family member from the United States. *Decision of the District Director*, dated January 30, 2006.

On appeal, counsel contends that the district director erred as a matter of law in denying the applicant's Form I-601, Application for Waiver of Ground of Excludability. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated February 27, 2006. The Form I-290B also indicates that the applicant plans to submit a brief and/or evidence within 30 days of filing the appeal. Accordingly, on January 11, 2008, the AAO contacted the applicant's counsel for copies of any materials submitted in support of the appeal, requiring a response within five business days. As of this date, the AAO has not received counsel's response. Therefore, the record will be considered complete.

The record indicates that the applicant was denied an immigrant visa by a Department of State consular officer on May 10, 2005 for having been unlawfully present in the United States for more than one year. The Form I-601 submitted by the applicant indicates that he entered the United States in June 1998 as a nonimmigrant and did not depart until December 2001. At the time of his consular interview, the applicant stated to the consular officer that it had not occurred to him to get another visa or leave the United States when his authorized stay ended and that he was unaware of the serious consequences of remaining in the United States beyond the period of his authorized admission.

Although the record does not establish the type of nonimmigrant entry made by the applicant in 1998, it, nevertheless, demonstrates that at the time of his 2001 departure he had been unlawfully present in the United States for more than one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 2001 departure from the United States and is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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.

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 on the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is his U.S. citizen spouse, [REDACTED], who currently resides with the applicant in Australia.

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 has held:

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. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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.

The AAO notes that extreme hardship to [REDACTED] must be established if she continues to live in Australia or if she returns to the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] if she remains in Australia. At his consular interview, the applicant stated that living in Australia makes it much more difficult for [REDACTED] to see or visit her family and friends in the United States. He also indicated that [REDACTED] was pregnant with their first child and that it would be hard for her to travel long distances with the child and also not to have him present to share in family gatherings in the United States. [REDACTED]'s mother, the applicant reported, has health problems that prevented her from attending his and [REDACTED]'s wedding in Australia and would preclude her from being present for the birth of her grandchild. He also asserted that Ms. [REDACTED] has found much less opportunity to make money in Australia and that she requires additional education if she is to work in Australia in the same type of job she held in the United States. No other evidence of hardship was provided in connection with [REDACTED]'s continued residence in Australia.

The AAO notes the statements made by the applicant to the consular officer at his May 10, 2005 interview. However, it finds the record to offer no documentary evidence that would support the applicant's claims regarding his wife's situation since her relocation to Australia, including his assertion that she is pregnant. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Moreover, were the AAO to accept the claims made by the applicant, the hardships he has described, even if considered in the aggregate, do not constitute extreme hardship. Instead, as described by the applicant at his consular interview [REDACTED] is experiencing the type of difficulties routinely encountered by individuals who join spouses living outside the United States. Accordingly, the record does not establish that [REDACTED] has experienced or will experience extreme hardship as a result of having moved to Australia to live with the applicant.

The second part of the analysis requires the applicant to prove that [REDACTED] will suffer extreme hardship if she returns to the United States without him. The applicant, however, does not address the possibility of Ms. [REDACTED] returning to the United States or what hardships might result from their separation. Therefore, he has failed to establish that [REDACTED]'s return to the United States would constitute an extreme hardship for her.

The issuance of a waiver under section 212(a)(9)(B)(v) is discretionary in nature. However, the exercise of discretion is undertaken only when an applicant has first established extreme hardship to a qualifying relative. The applicant in the present case has failed to demonstrate that the denial of the Form I-601 would result in extreme hardship to his only qualifying relative, [REDACTED]. As he is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

In proceedings related to an 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.

**ORDER:** The appeal is dismissed.