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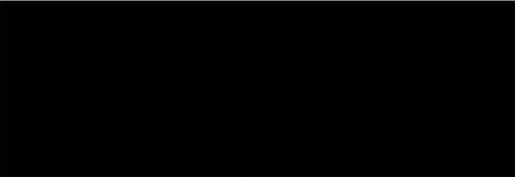
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U.S. Citizenship
and Immigration
Services

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JUL 20 2004



FILE: 

Office: FRANKFURT, GERMANY

Date:

IN RE: 

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:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany. 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 Germany who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days. The applicant is married to a citizen of the United States and is the beneficiary of an approved Petition for Alien Fiancée. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated November 5, 2003.

On appeal, counsel asserts that the denial of the waiver relies upon several factual and legal mistakes. Counsel contends that the decision incorrectly reflects the applicant's immigration history and disregards the disability and medical diagnoses of the applicant's spouse. *Form I-290B*, dated December 2, 2003.

In support of these assertions, counsel submits a brief, dated December 17, 2003; a letter from a physician treating the applicant's spouse, dated July 21, 2003; a letter from a clinical psychologist evaluating the applicant's spouse, dated December 3, 2003; copies of prescription labels for medications prescribed to the applicant's spouse; copies of individual income tax return documents for the applicant and her spouse; five declarations verifying active residence of the applicant in Germany and copies of passport pages and boarding passes issued to the applicant. 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . 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 the applicant entered the United States on a visitor visa on or about January 4, 2002 with authorization to remain in the United States until July 3, 2002. The applicant overstayed the period of stay authorized by her visitor visa by approximately seven months departing from the United States on February 6, 2003. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Germany in order to remain with the applicant. Counsel indicates that the applicant's husband has lived his entire life in the United States and that his family resides in the United States. *Brief to Accompany Form I-290B Notice of Appeal to the Office of Administrative Appeals (Formerly AAU)*, dated December 17, 2003. Counsel asserts that the applicant's spouse has invested in his career and cannot breach contracts he has made in the United States related to his business and personal life. *Id.* See also *Affidavit of Roger M. Keithly III*, dated September 18, 2003. Counsel further notes that the applicant's spouse attends law school in the United States. *Id.*

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining proximity to his family and progress in his chosen career, and honoring his business and residential contracts. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's husband experiences emotional hardship as a result of separation from the applicant. The record reflects that the applicant's spouse suffers from Adult Attention Deficit and Hyperactivity Disorder (ADHD). *Letter from Patricia A. Holladay, PhD*, dated December 3, 2003. Counsel contends that the applicant's absence exacerbates the ADHD symptoms of the applicant's spouse and indicates that the applicant's

presence is required for her spouse's well-being. See *Brief to Accompany Form I-290B Notice of Appeal to the Office of Administrative Appeals (Formerly AAU)* at 7 (stating "...Silke's daily presence in [REDACTED] life is vital, and her absence is debilitating"). The AAO notes that the applicant and her spouse have never resided together permanently as a married couple. As indicated by counsel, the applicant maintained a B-2 visitor visa during their courtship and after their marriage and was absent from the United States on numerous occasions for varying lengths of time weakening the claim of the need for her "daily presence" in her spouse's life. While the AAO acknowledges that the applicant's "steady and ordered manner bring [REDACTED] a sense of calm," the record does not establish that the applicant is uniquely qualified to care for her spouse or that the applicant's spouse requires continuous care. *Id.* The AAO notes that the submitted psychological evaluation of the applicant's spouse was compiled by a clinical psychologist who met with the applicant's spouse on one occasion. The record does not evidence a continuing relationship between the evaluating psychologist and the applicant's spouse. Further, the evaluation indicates that the applicant's spouse undergoes "maintenance appointments" with a psychiatrist, namely Dr [REDACTED] however the record fails to provide evidence of this ongoing treatment or feedback from the aforementioned psychiatrist. *Letter from Patricia A. Holladay.*

Counsel further contends that the business of the applicant's spouse is suffering as a result of the absence of the applicant although the applicant is not employed by her spouse's company. See *Brief to Accompany Form I-290B Notice of Appeal to the Office of Administrative Appeals (Formerly AAU)* at 8 (stating "Although Silke never received any income from Roger's business, ... it was these public events that provided Roger's business with publicity...he has lost his most important show person"). The record does not establish that the applicant is uniquely qualified to ride her spouse's horses in competitions. The record does not demonstrate that the applicant's spouse has been unable to secure the services of a show person for these purposes.

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 recognizes that the applicant's husband endures hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 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) 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.