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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

H4

[Redacted]

FILE:

[Redacted]

Office: SINGAPORE

Date: JUN 22 2004

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Singapore, Singapore. 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 Malaysia 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The acting 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 Acting Officer in Charge*, dated July 23, 2003.

On appeal, counsel asserts that the denial of the waiver is contrary to the evidence and to applicable precedent. Counsel contends that the denial does not discuss or evaluate any of the hardship factors set forth in the application and applies an incorrect standard. *Form I-290B*, dated October 3, 2003.

In support of these assertions, counsel submits a brief, dated October 3, 2003 and two affidavits of the applicant's spouse, dated June 27, 2003 and February 14, 2002, respectively. Counsel further submits copies of the United States passport issued to the applicant's husband reflecting entries to Malaysia in December 2003 and April 2004; copies of e-ticket receipts and itineraries for two trips to Malaysia; documentation evidencing a planned trip to Malaysia by the applicant's husband during July 2004 and documentation evidencing funds transfer from the applicant's spouse 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-

....

(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 the applicant entered the United States on a visitor visa on or about August 24, 1998. The applicant overstayed the period of stay authorized by her visitor visa by remaining in the United States for a total of two years and seven months. 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 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 Malaysia 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 in Support of the Appeal of I-601 Application for Waiver of Grounds of Inadmissibility*, dated October 3, 2003. Counsel states that the applicant's spouse has no family ties in Malaysia. *Id.* Counsel further indicates that the applicant's spouse would experience difficulty finding comparable employment in Malaysia as he cannot speak Malay and current conditions and immigration regulations in Malaysia would prevent him from working there. *Id.* See also *Affidavit of William Jay Citrin in Support of I-601 Application of His Wife, Mei Hoong Wong*, dated June 27, 2003. Finally, counsel asserts that the applicant's spouse has a great deal of time and effort invested in his career in the New York public school system and should not be forced to abandon his job prematurely. *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, continuing to earn a sufficient income, retain health insurance and contribute to his retirement account. 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 financial hardship as a result of separation from the applicant. *Affidavit of William Jay Citrin in Support of I-601 Application of His Wife,*

Mei Hoong Wong (stating “[M]y wife has found it extremely difficult to find stable and consistent work in her industry.”) The record fails to establish the applicant’s earnings or source(s) of income while she was residing in the United States as compared to her income in Malaysia. The record demonstrates that the applicant and her spouse have never resided together as a married couple weakening the claim of financial hardship to her spouse. The AAO notes that at the time of their marriage, the applicant had been denied admission to the United States owing to her inadmissibility rendering her future spouse aware of the uncertainty of the applicant’s immigration status in the United States. *Affidavit of William J. Citrin*, dated February 14, 2002 (indicating “[My wife] attempted to return to America [but] was not permitted to enter. ... We decided ... to get married.”) The AAO acknowledges that the applicant’s spouse has incurred expenses associated with his travel to Malaysia. However, the choice to travel is discretionary and the U.S. 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).

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.