

identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H4

MAR 23 2005

PUBLIC COPY



FILE:



Office: VIENNA, AUSTRIA

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, Vienna, Austria. 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 the Czech Republic who was found by a consular officer 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 naturalized citizen of the United States and 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 spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Officer in Charge, dated August 8, 2003.

On appeal, counsel asserts that extreme hardship is imposed on the applicant's United States citizen spouse as a result of his inadmissibility. Counsel states that the hardship is imposed on her and her entire family as a result of the separation. *Form I-290B*, dated September 1, 2003.

In support of this assertion, counsel submits a brief, dated August 31, 2003; a psychiatric evaluation, dated August 21, 2003 and evidence that the applicant and his spouse have been in contact including copies of telephone bills and flight itineraries.

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 or about September 8, 1995 on a visitor visa. The applicant was authorized to remain in the United States until March 8, 1996. The applicant overstayed the period authorized by his visa and remained in the United States until September 5, 2002. The applicant, therefore, accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he was departed from the United States during September 5, 2002. 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 himself 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 Board 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 will face extreme hardship if she relocates to the Czech Republic in order to reside with the applicant. Counsel states that the applicant's spouse has two daughters, the younger of whom is 16 years old. Counsel states that the teenage daughter of the applicant's spouse will not relocate outside of the United States. *Form I-601, Application for Waiver Per 8 USC Section INA § 212(a)(9)(B)(v) of Ground of Excludability Pursuant to INA § 212(a)(9)(B)(i)(II) Due to Extreme Hardship on US Citizen on Behalf of: Robert Kralick by U.S. Citizen Wife: Elzbieta Kielbus*, dated August 31, 2003. Counsel contends that if the applicant's spouse relocates to the Czech Republic, she will lose her job, alienate her daughter and fail to be able to survive economically. *Id.* at 4. Counsel asserts that the applicant's spouse suffers from a language barrier in the applicant's home country and would have difficulty obtaining gainful employment as a result. *Id.* at 5. Counsel further states that the applicant's spouse does not have family ties in the Czech Republic other than the applicant. *Id.*

The record fails to establish extreme hardship to the applicant's spouse if she remains in the United States in order to maintain proximity to her children, continue residence in her country of citizenship and employment in her current occupation. Counsel contends that the applicant's spouse suffers psychological hardship as a result of separation from the applicant. Counsel submits a psychiatric evaluation indicating that the applicant's spouse suffered a difficult childhood and was left by her first husband after 20 years of marriage. *Psychiatric evaluation of Elzbieta Kielbus*, dated August 21, 2003. The evaluating psychiatrist recommends that the applicant's spouse begin taking an antidepressant and seek therapy on a regular basis. *Id.* at 6. The record fails to contain documentation evidencing whether or not the applicant's spouse followed the

recommendations of the evaluating psychiatrist. Further, the record fails to establish an on-going relationship between a mental health professional and the applicant's spouse. Although the evaluating psychiatrist found that the applicant's spouse was detrimentally challenged by the burden of raising her teenage daughter and working, the record indicates that the applicant and his spouse were married less than one year when he departed from the United States. *Id.* at 3. The applicant's spouse, therefore, managed her career and family in the absence of the applicant prior to their marriage. Counsel contends that the applicant's spouse suffers financially as a result of being the family's sole breadwinner and supporting the applicant in the Czech Republic, however the record fails to establish that the applicant is unable to obtain employment in order to financially support himself.

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 wife endures hardship as a result of separation from the applicant. However, her situation, based on the record, 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 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)(v) 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.